

AN ACT ENABLING THE PEOPLE OF NEW MEXICO AND ARIZONA TO
FORM A CONSTITUTION AND STATE GOVERNMENT, ETC.

MARCH 28, 1910.—Ordered to be printed.

Mr. BEVERIDGE, from the Committee on Territories, submitted the
following

REPORT.

[To accompany H. R. 18166.]

The Committee on Territories, to whom was referred the bill H. R. 18166, have examined the bill and report the same back with an amendment in the nature of a substitute, and as amended recommend that the bill do pass.

The amendment to the entire House bill which your committee has reported as a substitute therefor, makes many changes from the House bill. Several of these are of much importance; the minor ones are made for the sake of greater and more definite phraseology.

Concerning the important changes, the committee calls the attention of the Senate to the following:

The amendment to the House bill which the committee reported as a substitute for the same, which hereinafter will be referred to for the sake of brevity as the "Senate bill," provides that when the constitutions of the proposed new states have been ratified by the people the same shall be submitted to the President and to Congress for approval; and if the President and Congress approve of the same, or if the President approves of the same and Congress fails to approve of the same at the next regular session, the election of state officers, members of the legislatures, representatives in Congress, and all other officers provided for in the constitutions shall take place at the time named in the bill.

With reference to the time for such election of such officers, it is provided that the governors of the proposed states shall, within thirty days after the receipt of the certification of the President of his approval of the constitution and the approval of Congress, or of his approval and of the failure of Congress to act at the next regular session, issue proclamations for the election of such officers referred to above "on a day designated by him in said proclamation, not earlier than sixty days nor later than ninety days after such proclamation of the governor ordering the same."

CONSTITUTION TO BE APPROVED BY PRESIDENT AND CONGRESS.

There are two reasons for these provisions. The first, providing for the submitting of the constitutions to the President and to Congress, is disclosed in the language of the bill itself. It is that the President and Congress, representing the Nation, shall review the constitutions of the proposed new states which the Nation is about to admit as a portion of its governing and lawmaking elements.

It is plain that this is nothing more than just to the Nation which is creating the proposed new states, and can not be hurtful to the new states themselves. The Nation is interested as vitally in the form of government of the states which it creates as are the new states themselves.

It is not only a measure of justice, but a measure of safety. It will certainly prevent any unsound or harmful provisions in the constitutions of the proposed new states. This, of course, will be beneficial to the proposed new states as well as to the Nation.

RATIFICATION OF THE CONSTITUTIONS AND ELECTION OF STATE AND OTHER OFFICERS SEPARATED IN TIME.

The election of state and other officers under these constitutions is separated from the elections to ratify the constitutions by sufficient time to enable the people to act in each election with mind single to that particular election. In voting upon the ratification of the constitutions the people have before them, not only in theory but as a matter of fact, nothing but the proposed constitutions themselves. In voting they can have nothing else in mind. In this election the people are not confused by the conflicting consideration of voting for the constitutions and yet having in mind the various candidates for the various offices.

It is the same of course as to the election of the various officers provided for in these constitutions—at the latter elections the people have nothing else in mind except the candidates for the various offices.

Were the constitutions and the various officers provided for therein to be voted on at the same time, the provisions of the constitutions would be lost sight of or at least partially obscured by the strife of the different candidates for office. This would be true if the elections for the ratification of the constitutions and the elections for state and other officers were separated in fact and yet so near to each other that candidates for office would be in the field. So it is deemed wise by the committee that these two elections shall be separated by a sufficient period to have each election distinct from the other.

There are three instances in the history of the Republic of the insertion in an enabling act of a provision requiring the new state constitution to be submitted for the approval of Congress.

The first was in the case of Louisiana. The act of Congress of February 20, 1811, section 4 (2 Stat. L., 642), provided:

The said convention, as soon thereafter as may be, is hereby required to cause to be transmitted to Congress * * * a true and attested copy of such constitution or frame of state government, as shall be formed and provided by said convention, and if the same shall not be disapproved by Congress, at their next session after the receipt thereof, the said state shall be admitted into the Union, upon the same footing with the original states.

The next instance was in the case of Alabama. The act of Congress of March 2, 1819, section 9 (3 Stat. L., 492), provided:

That, in case the said convention shall form a constitution and state government for the people of the Territory of Alabama, the said convention, as soon thereafter as may be, shall cause a true and attested copy of such constitution or frame of government as shall be formed or provided, to be transmitted to Congress for its approbation.

The third instance is in the case of Texas. The act of Congress of March 1, 1845, section 2 (5 Stat. L., 797), provided:

The constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action.

In all other cases prior to 1858 the constitution was submitted to Congress, and approval manifested in an act formally admitting the state to the Union, with the exception of Ohio, which seems to have been admitted by compliance with the enabling act without express approval of Congress. (See 2 Stat. L., 173, 201.)

In 1858, in the case of Kansas (11 Stat. L., 269), appears for the first time the provision authorizing the President by proclamation to declare the conditions of admission complied with. From this time on the practice became uniform, but the number of states admitted by express act of Congress is larger than the number of those admitted by force of a presidential proclamation.

There is also a precedent for the separation of the election of state officers from the election for the ratification of the Constitution. It is found in the act enabling the Territory of Colorado to form a constitution and be admitted into the Union. This provision is found in the eighteenth volume of the United States Statutes at Large, page 475, section 6, which reads as follows:

That until the next general census said state shall be entitled to one Representative in the House of Representatives of the United States, which Representative, together with the governor and state and other officers provided for in said constitution, shall be elected on a day subsequent to the adoption of the constitution, and to be fixed by said constitutional convention; and until said state officers are elected and qualified under the provisions of the constitution, the territorial officers shall continue to discharge the duties of their respective offices.

THE ELECTION LAWS OF ARIZONA.

The next considerable difference between the House and Senate bills is found in section 19 of the Senate bill.

The corresponding section of the House bill provides that—

Such election for delegates shall be conducted, the returns made, and the certificates of persons elected to such convention issued, as near as may be, in the same manner as is prescribed by the laws of said Territory regulating elections therein of members of the legislature; and the penal provisions of said laws are hereby made applicable to the election herein provided for.

The Senate bill substitutes for this the following:

A qualified elector within the meaning of this section shall be any male citizen of the United States of the age of twenty-one years who shall have resided in the Territory at least twelve months next preceding the date fixed for the election of delegates to the constitutional convention, as herein provided for, and who shall possess in other respects the qualifications of an elector as provided by title twenty, Revised Statutes of Arizona, August second, nineteen hundred and one. Within ten days after the issuance of the governor's proclamation ordering the election of delegates to the constitutional convention, as herein provided, the board of supervisors of each county of the Territory shall meet and authorize and require a reregistration of the qualified electors

of said county: *Provided, however,* That there need not be a reregistration of the qualified electors whose names appear on the great register of said county for the year nineteen hundred and eight, but all such names, together with such as may be registered under the provisions of this section, shall constitute the great register of said county and be used at each of the elections herein provided for; and so far as the same is consistent with the provisions of this Act, such registration, as also the making up, printing, distribution, and use of such great register, shall in all respects conform to and be governed by the provisions of chapter three of said title twenty, Revised Statutes of Arizona, nineteen hundred and one. And the provisions of this section shall apply to all voters at all elections for the ratification of the constitution, for state officers, members of the state legislature, Representatives in Congress, and all other officers named in said constitution or in any manner herein provided for or mentioned.

The difference in these two provisions is that the House bill fixes the qualifications of the voters according to the laws of the Territory of Arizona existing at the present time, whereas the Senate bill provides that their qualifications shall be the same as those provided for under the laws of Arizona under which its present legislature and its present Delegate to Congress were elected.

The Senate bill expressly refuses to recognize the law passed by the present legislature of Arizona at its last session providing for certain qualifications for voters.

This law assumes to provide a so-called "educational" test as a qualification for voters. In reality its effect is, and your committee believes its purpose is, to disfranchise a large number of those who are among the oldest and most substantial citizens of the Territory; second, to place in the hands of a single registration officer the power to refuse registration to any voter applying for registration—and this without any appeal from the decision of such registration officer; and third, to place in the hands of the majority of the election boards of the various precincts of the Territory the determination as to whether any voter appearing at the polls shall be permitted to vote or not—and this, too, without any appeal from any action such board may take. This law was passed on February 16, 1909, *under suspension of the rules*, BY A STRICT PARTISAN VOTE, *without debate*, the 10 Democrats who constitute the Democratic membership of the legislative council voting for it and the 2 Republicans who were members of the council voting against it.

GOVERNOR KIBBEY'S FIRST VETO MESSAGE.

On March 2, 1909, the Hon. Joseph H. Kibbey, governor of the Territory, vetoed this bill. Your committee here presents Governor Kibbey's veto message in full:

OFFICE OF THE GOVERNOR,
Phoenix, March 2, 1909.

To the council of the Twenty-fifth Legislative Assembly of the Territory of Arizona:

I return herewith the bill passed by the legislature, being bill No. 60 of the council, entitled "An act to amend paragraphs 2282, 2284, 2285, 2288, and 2289, chapter 111, title 20, Revised Statutes of Arizona, 1901, relating to qualifications of electors; and paragraphs 2374 and 2375, Chapter LX, title 20, Revised Statutes of Arizona, 1901, relating to voting and challenging," without my approval, because of the objections thereto, which I state as follows:

The qualification of voters of the old law, which it is proposed to amend by this bill, were:

1. That he be a male citizen of the United States; or
2. A male citizen of Mexico who shall have elected to become a citizen of the United States under our treaties with Mexico;
3. Of the age of 21 years;
4. Been a resident of the Territory one year next preceding the election, and

5. Of the county; and
6. Of the precinct in which he claims to vote, thirty days; and
7. Whose name is enrolled on the great register of the county, excepting idiots, insane persons, and persons who have been convicted of a felony.

To these qualifications above enumerated this bill adds two others; that is, and I number them for the convenience of reference:

"8. Who, not being prevented by physical disability from so doing, is able to read the Constitution of the United States in the English language in such manner as to show he is neither prompted nor reciting from memory, and

"9. To write his name."

As the absolutely certain result of the operation of this bill, if it becomes a law, is to disfranchise some who have had, ever since the organization of the Territory, the right of suffrage, it must necessarily be presumed that that is the purpose of the proposed law.

The whole spirit of American institutions is so sensitive of any limitation upon the right of the franchise that I think it well enough to give this proposition of disfranchisement careful consideration.

I can not recall that this proposition has been made a subject of discussion in public. It was not discussed or even mentioned by the newspapers during the political campaign preceding the last election, nor was it even most remotely an issue in that campaign.

The bill itself was introduced in your house and passed under a suspension of the rules without being printed and without discussion. It was sent to the house of representatives and there passed in a like summary manner. The utmost expedition was observed in passing the bill.

Of course I would not say that a voter ought not to be able to read the Constitution of the United States, or any other composition, in the English language. That is not, however, the question presented here. The question is, Shall he be disfranchised if he can not read the Constitution of the United States in the English language in such a manner as to show that he is neither being prompted nor reciting from memory?

It was probably the mind of the legislature to raise the standard of the suffrage and to prevent in some degree at least the possibility of a venal and ignorant vote.

Whatever tends to do this is generally to be approved; but it occurs to me that in this effort to raise the standard of the franchise and to some extent eliminate the ignorant vote the doors are widely opened by this proposed law to infinitely greater evils.

In America the tendency has always been toward universal suffrage, notwithstanding there is a sentiment and a proper one that it ought to be limited to the intelligent, to the honest, and to those who have a direct interest in the orderly and just administration of public affairs.

The difficulty has always been to formulate and apply a just rule, by the honest and impartial application of which a classification can be made between the intelligent and the honest on the one hand and the ignorant and the venal on the other. Dishonesty and venality are not necessarily, not probably, even, or ordinarily, the accompaniments of ignorance.

It is not a safe rule to measure the honesty of voters by the degree of their education. For every ignorant voter bought there is some fairly intelligent director who was the purchaser; and of the two, if a choice were compelled, the more ignorant is the less vicious and dangerous. It might be admitted, it is true, that if all men individually could be assigned to one of those two classes—the intelligent or the ignorant—that it would be well to accord to the intelligent the right of suffrage and deny it to the ignorant. But to say that all men in America who can not read the Constitution in the English language are so ignorant and illiterate that they ought to be denied the right of suffrage is grossly unjust.

For generations there have been settlements in the older States of the Union where the English language was seldom if ever spoken; where the German, or the French, the Scandinavian, or the Hebrew are almost the only languages spoken. Because they do not speak or read or write English is not to denounce them as ignorant, illiterate, and hence venal, dishonest, and corrupt. Such a conclusion would be an unjust imputation against thousands of the best, most honest, most industrious, and desirable citizens of our free, cosmopolitan country. They may not be able to read the Constitution in English, but they who are Germans understand it quite as well as most of those who are able to do so; and so of the French, the Scandinavians, etc.

In many parts of the United States in the earlier days large numbers of immigrants of some particular nationality have settled, constituting practically all of the settlers in this or that particular locality. They brought with them, of course, their mother tongue. And that has been the history of some settlements for many generations.

They had their schools, they read, they studied, they cultivated their minds and their talents, and they became and have remained amongst our most intelligent citizens.

Not many years ago it was difficult, and perhaps it may be so now, to say whether a Dutchman is from Deutschland or from Pennsylvania, where his ancestors have lived for generations. To condemn them, nevertheless, because they can not read the Constitution in the English language is at least unjust.

When this Territory was acquired by the United States, by far the largest part of the population were Mexican citizens, speaking only the Spanish language. Those speaking the English language were few, and naturally, because the Spanish was largely the predominant language, they at once learned the Spanish language themselves, and our Mexican citizens did not learn English for the very simple reason that there was no necessity for it and little use for it. The treaty of cession by Mexico to the United States provides that Mexicans who remained in the ceded territory for the period of one year from the date of the treaty without declaring an intention to remain Mexican citizens should become citizens of the United States. And they became so, notwithstanding they did not speak the English language. It would have been gross injustice and a direct violation of the spirit of the treaty to have denied them any of the rights of American citizenship because they could not speak and read the English language. I do not deny that they should have as speedily as possible learned the language of their adopted country. But it seems to me some regard must be had for conditions. At first the Spanish was practically the only language spoken in the Territory. A people does not, nor, indeed, do individuals, usually change their speech voluntarily. The acquisition of a new language voluntarily is a refinement of education confined to few individuals as a mere accomplishment. That a whole people should change their language denotes that there was a necessity more or less urgent to do so, or the acquisition is the result of years and often generations of association and intercourse with a people speaking a different language who have become predominant.

As I have said at first, there was no necessity that the Mexicans should learn English; it was easier and more natural for the few Americans to learn Spanish. As the English-speaking people grow in number, that language has become predominant, and the use of Spanish is growing every year less and less prevalent in the Territory. As time goes on the necessity for all of our people, including those of Mexican descent, to speak the English language increases, and before long the English will be practically the only language spoken in Arizona. This process of acquisition by a people of a new language has not been delayed longer in Arizona than has been the rule where like conditions have prevailed. The process is a natural one; its completion in due time is inevitable. The process is accelerated or retarded very much in proportion as the English-speaking population increases or lags. In some localities the Mexicans are fast acquiring the use of English because it has become the predominant language. In others the Spanish is yet the predominant language, and the transition is slower; but I am certain not less sure. There are natural conditions, and they can be changed by natural processes, and I can not feel otherwise than that it is unjust to disfranchise our Spanish-speaking people because of the existence of these natural conditions.

The earliest landowners in our valleys, the earliest miners in our hills, the earliest owners of live stock on our ranges were Mexican, speaking only the Spanish language. In those days that language was the predominant language; was the language of trade and social intercourse, and they had no use for any other and had no time to acquire any other, as a mere refinement of education. But they have all along been American citizens.

I do not wish to be misunderstood. I believe that the language of any nation is a national institution; possibly one of the chiefest, and that all who claim the rights of citizenship of the nation should understand its language. What I do wish to be understood to say is that I think it is unreasonable to require of any people the acquisition of a different national language faster than in the due, ordinary, and natural course; and that to impose the penalty of disfranchisement for not doing so is rather harsh and ungenerous.

But even if it were to be conceded that all our voters should be English speaking and able to read in that language, this bill is open to very grave objections.

The new qualification required is the ability to read the Constitution of the United States in the English language in such a manner as to show that the voter is not being prompted nor reciting from memory.

The law requires the voter to be registered. The registration officer must, in the first instance, be the judge whether or not the proposed voter can read the Constitution in the English language so as to show that he is neither being prompted nor reciting from memory.

This decision by the registering officer is one of opinion and not of facts. I can not conceive how a man can tell as an indisputable fact whether another reads so as to show that he is not reciting from memory. The mere speaking of the printed words can not, as a matter of fact, show whether he is reading or is reciting from memory. The most unbiased and dispassionate judge would not venture, in most cases at least, an opinion. He would not dare to say more than that it appears to him either that the other is reading or that he is reciting. It is mere opinion, incapable of contradiction or demonstration. It would not be difficult for an illiterate person (and illiterate people are noted for quick and retentive memories) to memorize the whole of the Constitution and recite it so as to defy contradiction of the fact that he was reading. On the other hand, there are many comparatively well-educated people who can not read without hesitancy, repetition, and faults, especially under the embarrassment and excitement of test, and that the hesitancy, repetition, and fault are not due to defective memory is purely a matter of opinion.

In practice it is not to be supposed that the proposed voter shall read the whole of the Constitution; that would be a tedious process. How easy, then, it would be for the illiterate voter to memorize a particular section under a prearranged plan, and that section be presented to him to read (recite, in fact) by the registering office. I need only suggest the possibilities for fraud under this plan.

This bill provides that a voter may be challenged on the grounds that he can not read the Constitution in such a manner as to show that he is neither being prompted nor reciting from memory. The inspector on the election board must apply the test, and the majority of the board decide it. Election boards are always partisan. In the heat of the strife of an election partisanship runs high, and the judgments of men are swayed by party spirit. The members of the election board have an intense interest in the result of the election, and they are made the judges upon whose decision may depend the result of the election for or against them. And that judgment is simply an opinion as to whether a man is reading or reciting—an opinion worth little in the most dispassionate moments and wholly worthless or worse in the hot zeal of a fiercely contested political election. An opinion that can be impeached by no rule and from which there is no appeal.

Under this bill men may be disfranchised by the error of judgment of most honest election boards, or men may be enfranchised who can not read a word of English or any other language. But how much more dangerous is it that men may be disfranchised by a partisan board's opinion and how wide open the door to the admission of illiterate voters? Under this bill a dominant party could perpetuate itself in power beyond remedy.

We have laws to prevent, as far as that can be done, the admission of fraudulent votes. This bill makes it easy for admission of fraudulent and for the exclusion of honest votes as partisan interest may dictate or suggest.

If we are to have an educational qualification let us have it so formulated that the test can be fairly applied. Under this bill the application of the test under the most dispassionate environment, by the most honest and painstaking men, impelled by no present interest to depart from the plain path of justice and right, is wholly unreliable and therefore inherently vicious and wrong. To disfranchise men because it is the opinion of a registering officer that the voter is speaking the words of a part or of the whole of the Constitution, is simply reciting from memory and not reading, is too frail a protection to one of the most estimable rights of American citizens. To permit the right of franchise to depend upon the mere opinion of a majority of an election board, excited by partisan zeal, whose judgments are unstrung by the bitterness of a party contest, without impeachment or possibility of correction, is too dangerous to be regarded with any degree of complacency.

I therefore return this bill without my approval.

JOSEPH H. KIBBEY, Governor.

THE ARIZONA ELECTION LAW.

Thereafter it was found by the legislature that some verbal mistakes had been made in the law, necessitating minor changes, which were made. Immediately after that the legislative council, by the same partisan vote, the 10 Democratic members of the legislature voting in the affirmative and the 2 Republicans voting in the negative, *under suspension of the rules and without debate* passed the bill over the governor's veto.

The bill is as follows:

AN ACT To amend paragraphs 2282, 2284, 2285, 2288, and 2289, Chapter III, Title 20, Revised Statutes of Arizona, 1901, relating to qualifications of electors, and paragraphs 2374 and 2375, Chapter IX, Title 20, Revised Statutes of Arizona, 1901, relating to voting and challenging.

Be it enacted by the legislative assembly of the Territory of Arizona:

SECTION 1. That paragraphs twenty-two hundred and eighty-two, twenty-two hundred and eighty-four, twenty-two hundred and eighty-five, twenty-two hundred and eighty-eight, and twenty-two hundred and eighty-nine, chapter three, title twenty, Revised Statutes of Arizona, nineteen hundred and one, be amended to read as follows:

"2282. (Section 11.) Every male citizen of the United States, and every male citizen of Mexico who shall have elected to become a citizen of the United States under the treaty of peace exchanged and ratified at Queretero on the thirtieth day of May, eighteen hundred and forty-eight, and the Gadsden treaty of eighteen hundred and fifty-four, of the age of twenty-one years, who shall have been a resident of the Territory one year next preceding the election, and of the county and precinct in which he claims his vote thirty days, and who, not being prevented by physical disability from so doing, is able to read the Constitution of the United States in the English language in such manner as to show he is neither prompted nor reciting from memory, and to write his name, and whose name is enrolled on the great register of such county, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; but idiots, insane persons, and persons who have been convicted of a felony shall not be entitled to nor allowed to vote.

"2284. (Section 13.) Prior to any general or special election hereafter to be held, the board of supervisors of any county shall, by order, require a reregistration of the voters of such county, which order shall be published in at least one newspaper published in such county, or if none be published, one having a general circulation therein, for not less than thirty days preceding the next ensuing election.

"2285. (Section 14.) Such reregistration shall conform in all respects to the provisions hereof concerning original registration. All registering officers shall be allowed the sum of twenty cents per name for registering or reregistering voters.

"2288. (Section 17.) No person's name must be entered by the recorder unless:

"1. Upon a certificate of registration in another county, showing that such registration has been canceled, and upon proof by the affidavit of the party that he is an elector of the county in which he seeks to be registered.

"2. Upon the returns of the registering officer of the county made to the county recorder, together with the affidavits taken.

"2289. (Section 18.) Before anyone applying for registration can be registered he must make an affidavit in writing before the registering officer, wherein must be stated and shown each and every fact entitling such person to be registered and also the facts required to be stated on the great register, except the date and number, and no person shall be registered who, not being prevented by physical disability from so doing, is unable to read the Constitution of the United States in the English language in such manner as to show he is neither prompted nor reciting from memory or unable to write his name."

SEC. 2. That paragraphs twenty-three hundred and seventy-four and twenty-three hundred and seventy-five, chapter nine, title twenty, Revised Statutes of Arizona, nineteen hundred and one, be amended to read as follows:

"2374. (Section 103.) A person offering to vote may be orally challenged by any elector of the county upon either or all of the following grounds:

"1. That he is not the person whose name appears on the register.

"2. That he has not resided within the Territory for one year next preceding the election.

"3. That he has not resided within the county or precinct for thirty days next preceding the election.

"4. That he has before voted that day.

"5. That he has been convicted of a felony.

"6. That he has made a bet on the result of the election.

"7. That not being prevented by physical disability from so doing he is unable to read the Constitution of the United States in the English language in such manner as to show he is neither prompted nor reciting from memory or is unable to write his name.

"2375. (Section 104.) Upon challenge being made, the one so challenged may, if he so elect, be at once sworn to answer fully and truly all such questions as may be put to him by the inspector: *Provided*, Such questions are pertinent and material to

the challenge made; and if, after such examination, a majority of the board shall be satisfied that the challenge is not true, the one challenged shall be permitted to vote, else not, and if such challenge be upon the seventh ground specified in paragraph 2374, the party challenged shall be required to read any section of the Constitution of the United States that may be designated by the inspector and may be required to write his name, and if thereupon a majority of the board shall be satisfied that the challenge is not true the one challenged shall be permitted to vote, else not."

SEC. 3. All acts and parts of acts in conflict herewith are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

This bill having been returned by the governor, with his objections thereto, and, after reconsideration, having passed both houses by two-thirds vote of each house, has become a law this 10th day of March, A. D. 1909.

GEO. W. P. HUNT,
President Legislative Council.

SAM F. WEBB,
Speaker House of Representatives.

GOVERNOR KIBBEY'S SECOND VETO MESSAGE.

Again the governor vetoed the bill, and his veto message is herewith set out in its entirety:

EXECUTIVE DEPARTMENT OF ARIZONA,
OFFICE OF THE GOVERNOR,
Phoenix, Ariz., March 10, 1909.

TO THE COUNCIL: This is the second time a bill of precisely this tenor has been transmitted to me. The first was known as council bill No. 60. This bill is known as council bill No. 123, and is entitled, as was council bill No. 60, a bill for "An act to amend paragraphs 2282, 2284, 2285, 2288, and 2289, chapter 111, title 20, revised statutes of Arizona, 1901, relating to qualifications of electors, and paragraphs 2374 and 2375, Chapter IX, title 20, revised statutes of Arizona, 1901, relating to voting and challenging."

I duly returned council bill No. 60 without my approval, stating my objections to it. I now return this bill to you without my approval.

It is hardly necessary to reiterate the objections which I stated as to council bill No. 60. They are applicable to this bill and are of course presumably known to you, and I regard them as sufficient grounds for my disapproval of the bill.

Since the transmittal of my objections to the council bill No. 60, this proposed law has been the subject of some newspaper comment. It has been sought by some of a partisan press to justify this law by a statement that it is taken from the constitution of the State of Maine.

It seems to have been thought necessary to cite some example of like legislation to escape the imputation of gross injustice proposed to be inflicted by this law by the disfranchisement of a large number of citizens who, ever since the organization of the Territory, nearly a half century ago, have had the right to vote. Hence Maine is cited as a respectable precedent for this sort of legislation.

And this naturally enough directs our attention to the provisions of the Maine constitution which are cited as the excuse for this bill.

A casual consideration of the matter discloses a singularly close analogy between the conditions here and in Maine, both past and present.

Maine was once a part of New France, just as Arizona was once a part of New Spain. Probably the earliest grant of lands in North America by a European sovereign was the grant by the French King of lands which include the territory of the present State of Maine. That grant antedated the Virginia grant by the English King and in subsequent contests between England and France for American possessions the priority of the grant was practically conceded to be the basis of right; but it was claimed that because the earlier French grant had been subsequently annulled by the French King himself, the French lost their prior right to that part at least of New France which embraces Maine.

But even earlier than this Spain had occupied and therefore claimed a vast extent of American territory, including what is now Arizona.

A large part of Maine was early settled by the French, and so a larger part of the early population of Arizona was Spanish.

In Maine these French settlers and their descendants retained their French speech, as have the Spanish settlers and their descendants in Arizona retained their Spanish language as their mode of intercommunication. The like causes operated in the two sections; the one to the French and the other to the Spanish, and like conditions

resulted. In Maine no more rapid progress had been made in substitution of the English for the French language than has been made in Arizona of the English for the Spanish. Indeed, probably the transition has not been as rapid in Maine as it has been in Arizona.

In 1820, when Maine became a State of the American Union, she had been for one hundred and fifty years subject to English or American institutions; the English language was and had been one of those institutions; yet in 1830 there were more citizens of Maine who spoke French than there are now citizens of Arizona who speak Spanish. In that year (1820), fully aware of these conditions, Maine adopted her first constitution. In that constitution the qualifications of elector were that the voter should be a male citizen of the United States of the age of 21 years and upward, having his residence established in the State and town or plantation for three months next preceding an election. There are the usual exceptions of insane and other incompetents, and felons. There was no exception because of inability to read in the English language. So far the conditions bear an analogy to those in Arizona.

In 1893 the constitution of Maine was changed. It was then provided that "no person shall have the right to vote or be eligible to office under the constitution of this State who shall not be able to read the constitution in the English language, and write his name: *Provided, however,* That the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who shall be 60 years of age or upward at the time this amendment shall take effect."

Comment is hardly necessary. The people of Maine would not, and did not, disfranchise those who had had theretofore the right to vote. All they sought to do was to require of new voters a knowledge sufficient to be able to read the constitution. But this bill disfranchises hundreds of voters not only of our Mexican citizens, but many possibly of Swedish or Danish descent, or both, of German, Italian, and others. So sensitive were the people of Maine of the rights of its citizens that they would not even attempt to disfranchise men who had attained the age of 60 years, realizing that men of that age are not likely able to acquire a new language. The proposed law of Arizona, however, is so ruthless and harsh that it disfranchises and penalizes citizens for not doing what no other people ever did do—acquire under like circumstances a knowledge of the use of a language not their own native tongue.

The justification of this law can not be found in the provision of the Maine constitution. Those provisions teach exactly a contrary lesson. They condemn rather than warrant the unjust provision of what it has pleased some to call our "educational qualification law."

Hundreds of taxpayers will be disfranchised by this proposed law, citizens of Spanish, German, Scandinavian, and other national descent, for no sufficient reason.

To make operative the provisions of the constitutional amendment the legislature of Maine in the same year (1893) enacted rather elaborate statutory regulations, preserving always and jealously the rights of the voters.

If the framers of the Arizona law had followed the example of Maine throughout, this bill could and would have probably applied to it no other application than that of an "educational qualification law."

The Maine law provides for a registration of voters. In cities or towns of 4,000 or more inhabitants, a board of three is appointed, one by the governor, one by the Republican, and the third by the Democratic party organizations. This board fixes a place and a time for registration; has the power to call witnesses, and makes other provision for dispassionately and honestly and impartially trying the question of the ability of the voter to read. The method removes any possibility of an unjust decision of that question and it must be fairly tried. In towns of less than 4,000 inhabitants certain municipal officers are charged with the duty of registration, with like powers and with like safeguards thrown about the right of suffrage.

Comparison of the system of registration in Maine with that in Arizona makes at once apparent the danger of this bill if it becomes a law. It is wholly unnecessary to point out the differences.

But the framers of this proposed law seem not to be content with the decision of a peripatetic registering officer whose business in the Arizona practice is to drum up voters of his own political party. The voter is required to submit to a further test. He, notwithstanding the registering officer has passed him, must submit to the ordeal of the scrutiny of an election board on election day. He had a right to have reviewed by a court the decision of the registering officer, if it were unjustly and unfairly adverse to him. But even then he is cut off by the provision of this proposed law that he may be challenged upon the ground that he can not read the Constitution of the United States in the English language in such a manner as to show that he is neither prompted nor is reciting from memory. From the decision of a partisan election board he has

no appeal. Notwithstanding the registering officer has decided that question in his favor—nay, even though a court may have done so—still, on the day of election, his right can be denied and he is helpless. I confess I can not understand why this was made a cause of challenge upon any theory that this law is in good faith an "educational qualification law."

Presumptively a man whose name is on the great register is a qualified voter, at least if his name is properly on the register. Our statute heretofore has proceeded upon the presumption of the existence at the time of registration of every fact qualifying the voter for registration. If a man has falsely registered, he is to be punished for that.

A disqualification that might have existed at the time of registration and which could not have arisen since registration was not a ground for the challenge of a registered voter until this law proposed a radical change.

Our law requires that a voter shall be over 21 years of age. That he is not 21 years of age is not a ground of challenge.

It requires that he be a citizen of the United States. But that he is not a citizen of the United States is not a ground of challenge. Or that he was not a citizen of Mexico, becoming a citizen of the United States under the treaty of cession, while it is a disqualification, that disqualification is not made by our statute a ground of challenge at the polls.

If the proposed voter is of foreign birth, he must have been naturalized to qualify him to vote. But that such foreigner has not been naturalized is not a ground of challenge.

If he be an idiot or an insane person, he is not qualified to vote, and yet that he is an insane person or an idiot is not a ground of challenge.

The grounds of challenge are those disqualifications which in the nature of things may arise after registration and before the tender of the vote, as:

1. That he is not the person named on the register.
2. That he has not been a resident for a year at the time he offers his vote; he may have lost his residence since registering.
3. That he has not resided in the county for thirty days; he may have lost that residence since registration.
4. That he has before voted that day.
5. That he has been convicted of a felony.
6. That he has made a bet on the result of the election.

If a man can read the Constitution of the United States in English at the time he is registered, it is safe to assume that he may be able to do so a month or six weeks later, at the time of the election.

But under this law he must prove the fact the second time. That, too, before a tribunal that is too apt to be prejudiced or biased by partisan zeal.

The utter confusion and wrong that may result from making this a ground of challenge is apparent.

The average number of voters at each precinct in the Territory is about 100. In many there are as many as four or five hundred. But assuming there to be 100, how easy it is to block the progress of the election for partisan purposes by the application of this law. The polls are open nine hours at the utmost, which is five hundred and forty minutes. It will take the average reader fifteen minutes to read the Constitution, and a partisan board may require the full reading by each challenged voter; and it will not do to say that this is too extreme to anticipate. Just such things have not only been attempted, but done, to the exclusion of honest voters. It would require the challenge of only 36 voters to consume the entire election day, to the exclusion of the voters.

This bill places too much and too dangerous a power in the hands of partisan registering officers and election boards. It makes it possible for them to disfranchise voters against whose qualification there can be no question justly raised. The power is absolute and the temptation great, and there is no remedy for the misuse of the power.

I therefore can not approve this bill.

JOSEPH H. KIBBEY, Governor.

CORRESPONDENCE BETWEEN DEMOCRATIC CAMPAIGN CHAIRMAN AND GOVERNOR SLOAN.

This law aroused a bitter feeling. It was hotly resented by those who believed that it would work the injustices above referred to and that such was its purpose. It became a matter of universal discussion. To such an extent was this the case that M. C. Burns, chair-

man of the territorial Democratic campaign committee, addressed a letter to Governor Sloan on the subject under date of February 8, 1910, which letter your committee reproduces in full:

TUCSON, ARIZ., February 8, 1910.

HON. RICHARD E. SLOAN,
Governor of Arizona, Phoenix, Ariz.

MY DEAR GOVERNOR: Some days since a statement appeared in the public press purporting to be an interview with yourself in which you are quoted as having stated that you had examined the statehood bill as introduced in the United States Senate by Senator Dillingham, and that it met with your entire approval.

In the issue of the Tucson Star of February 8 appears what purports to be a verbatim copy of the bill as introduced in the United States Senate.

A portion of section 15 of this bill as published provides that a qualified elector within the meaning of the section shall be any male citizen of the United States of the age of 21 years, who shall have resided in the Territory six months next preceding the date fixed for the election of delegates to the constitutional convention, and who shall possess, in other respects, the qualifications of an elector as provided by title 20 of the Revised Statutes, August 3, 1901.

The act as published also provides that the great register of the year 1908, with each additional names as may be registered under the provisions of this section, shall constitute the great register for the purpose of the election of delegates to the constitutional convention; and the bill as published further provides that these qualifications shall apply to all voters at all elections for the ratification of the constitution for state officers, members of the state legislature, Representatives in Congress, and all other officers named in the constitution of the proposed State, or in any manner provided in the bill.

It will be seen that the proposed bill ignores the various statutes of this Territory enacted subsequent to the Revised Statutes of 1901, looking to the requirement of a higher grade of intelligence and higher qualifications of voters, and specifically restores the provisions of the Revised Statutes with reference to those matters, as well as prescribing a shorter period of residence for voters even than is provided by the Revised Statutes.

In view of the general tendency of this country toward requiring a high standard of intelligence as a prerequisite to voting at elections, which has found expression in the statutes of many States, and especially in the act prescribing the so-called "educational qualifications," passed by the last territorial legislature, it would seem that the carefully prepared provisions in the Senate bill looking to the doing away of these requirements, as well as shortening the period of residence required from one year to six months, must have escaped your attention in your examination of the proposed statehood bill.

I would therefore appreciate it if you would advise me whether these provisions meet your approval, and whether as chief executive of this Territory you intended by your expressions of approval of the Senate bill to include a statement that you approve the provisions above referred to.

I will be at the Adams Hotel, Phoenix, on February 10, where I shall be pleased to receive your reply.

Yours, very respectfully,
M. C. BURNS,
Chairman Territorial Democratic Campaign Committee.

To this letter Governor Sloan replied on February 11, 1910. The reply of Governor Sloan is as follows:

OFFICE OF THE GOVERNOR,
Phoenix, Ariz., February 11, 1910.

HON. M. G. BURNS,
Chairman Democratic Campaign Committee, Phoenix, Ariz.

MY DEAR MR. BURNS: I beg to acknowledge receipt of your letter of February 8, and to submit in reply thereto the following somewhat lengthy statement of my attitude with regard to certain provisions of the pending statehood bill you specifically mention.

Permit me, at the outset, to correct the misstatement in the published interview, to which you refer, but which I have not seen, and in which I am quoted as having stated that I had examined the Dillingham bill, and that it met with my entire approval. I have made no such statement in any interview and I must have been misquoted. I had no opportunity to see the bill before leaving Washington, as it was

not then prepared, and hence I did not know what were its provisions until I received it by mail, through the courtesy of Mr. Cameron. I was informed while in Washington, however, that the provisions of the Cameron bill relating to the qualifications of voters at the election of delegates to the constitutional convention, and subsequent elections prior to our admission as a State, would substantially be incorporated into the Senate bill. Permit me, also, to suggest that, contrary to an implication in your letter, it is not in my province as chief executive of the Territory to approve or disapprove of any act of Congress, and my views with relation thereto must, therefore, be that of a citizen of the Territory, interested like other citizens in its effect upon the people of the Territory. With this preliminary statement I answer your inquiry by saying with entire frankness that, as a citizen of Arizona, I approve of the Senate bill in shortening the time of residence needed to qualify a voter from one year to six months, and further, approve of the repeal of the territorial act of March 10, 1909, erroneously as I believe, referred to as the educational qualification law. Having thus stated with entire frankness my attitude as to those provisions of the statehood bill, permit me to give my reason for the same.

The territorial act referred to is, in my judgment, to be condemned because it is plainly partisan, unjustly discriminatory, and instead of tending to purify and elevate the electorate is so drawn as to be a ready instrument of fraud in the hands of corrupt or unfair election officers and boards. That the act was partisan in origin and purpose is shown by its history. It was one of the caucus acts of the last legislature, and although it was new legislation, far-reaching in its consequence, it was nevertheless passed with little or no discussion or debate by a strict party vote, and when vetoed by the governor in a message of great force and ability was yet passed over the veto without discussion and by the same vote. The fact that the act was partisan in origin and intent and may result to the advantage of your party and to the disadvantage of mine is no sufficient reason why I, as a broad-minded, patriotic citizen of the Territory, should condemn it if it be good, clean legislation in other regards. On the other hand, unless the act can be defended as a useful and needed amendment to our election laws, the fact that it was intended and does result to the advantage of the Democratic party is no reason why Republicans should withhold just criticism or refrain from expressing their disapproval. Such a course would be cowardly and unworthy of courageous party leadership.

Does the act contain sufficient merit to withstand fair and just criticism aside from its partisan character? It provides in effect as one of the qualifications of an elector that he shall be able to read orally from the Constitution of the United States in English so as to satisfy an election board that in thus reading he is neither prompted nor reciting from memory, and that he shall be able to write his name. It is thus not so much an educational as a racial qualification, for no one will seriously contend that the ability to read orally from the Constitution in English is any just education test, any more than the ability to read orally French or German is any such test. The ability to read and write is generally accepted as a test of intelligence, but the ability to read and write in any particular language is not. I doubt if any advocate of this law would be so disingenuous, not to say dishonest, as to claim that the law is either intended to or does in effect disfranchise any considerable number of voters other than those who speak the Spanish language and whom we ordinarily call Mexicans. This being so, I contend that the act is unjustly discriminatory, racial in its application, and as such is to be condemned. Many good people may be misled as to the act and entertain a mistaken belief based upon insufficient information or prejudice that the demands of good citizenship require the elimination of the Mexican vote. Granted that we would be better off if the venal, ignorant, and purchasable portion of that vote, as of our entire electorate, could be eliminated, nevertheless I hold it to be unjust and undemocratic to include in this discrimination a large number of intelligent, respectable, law-abiding, and patriotic men whose ancestors lived here long before any American ever visited the Territory or dreamed that it should become at any time one of the United States, who know no other home or country, who have property and pay taxes, who are rearing families here, and who, by every consideration, are entitled to all the rights and privileges of citizenship. I know many such men in Apache, Navajo, and Pima counties, as well as in other communities in the Territory. Having been reared in Spanish-speaking households and in Spanish-speaking communities, and having gone to schools where Spanish alone was taught, their knowledge of English is about such as Americans acquire of Spanish under like circumstances. These men would not attempt to qualify as voters by reading orally in the presence of a critical and possibly hostile audience from the Constitution of the United States. The result is the almost complete disfranchisement of this class of Mexicans. There is in every community and among every race an element unfitted intellectually and morally to exercise the franchise. The effort to restrict this

franchise if made should be directed toward the elimination of this element alone. That this is a matter of great difficulty everyone who has given thought to the matter must admit.

It is, however, extremely doubtful if the quality of the Mexican vote will be improved by the enforcement of this law, for the very best element among the Mexican population is that which resides on the farms and ranches and in the country communities, and this is the element which would be eliminated. The objectionable and purchasable element among the Mexicans, as among the Americans, is to be found largely about our towns and cities, and this element, in my judgment, would be able for the most part to qualify in our elections. Now and then a colored man, and now and then an Italian, German, or Bohemian may be disfranchised, but this number, in my judgment, would be insignificant as compared with the almost wholesale disfranchisement of the respectable element of our Mexican population, who, by all the rights of birth, ancestry, identification with the country, and treaty rights as well, have a just claim to consideration in any scheme looking to the curtailment of the privileges of citizenship.

Assuming, which I do not admit, that an educational qualification is a good thing and that manhood suffrage is undesirable, to be consistent and even reasonably fair it should apply alike to men of every race and color. It should be, in truth, an educational qualification, and the means adopted for enforcing it should be adequate, with sufficient safeguards to insure the utmost good faith in its application. No hastily constructed or insufficiently thought out scheme for limiting the franchise ought to be tried. The act in question is, in my judgment, not only unjust to its discrimination against a class of citizens worthy of exercising the franchise and by every right of citizenship and long identification with the country entitled to it, but is so framed as to be the instrument of gross fraud in the hands of men who may choose to exercise it. This was very clearly pointed out in the very able veto message of Governor Kibbey. It leaves the matter, in the first instance, to the discretion of registering officers, who, as we know, will either not exercise it or who will exercise it too often as their partisan judgment may suggest. In the second place, it is left to the discretion of election boards under circumstances which will not admit of any fair determination, even when such boards are disposed to be fair, for the timid and diffident may fail, although really qualified, when their right to vote is challenged and the test is made in the presence of a possibly unfriendly or critical audience. No right of review is provided for in either instance, and their discretion, however unwisely or unfairly exercised, is final. I believe that beyond the question of qualification of the electors the question of honest administration of the election laws is of greater importance. I believe, therefore, it is unwise, even in an honest and sincere effort to elevate the electorate by changing the qualification of electors, to thus open the door for fraud or unfair discrimination on the part of the officers of an election, for I am sure that partisan zeal in too many cases will prompt such officers to take advantage of the easy and comparatively safe opportunity which the law thus affords to perpetrate wrongs against the purity and integrity of the franchise.

I confess I was somewhat surprised by the statement in your letter that "the general tendency of this country is toward acquiring a high standard of intelligence as a prerequisite to voting at elections," and that this "has found expression in the statutes of many States." I think I am very familiar with the subject-matter embraced in this statement and I am aware of no such tendency in so far as legislation of recent origin is concerned. Few of the states have adopted an educational qualification. The states having such statutes are Maine, Connecticut, Louisiana, Massachusetts, Mississippi, and North Carolina. None of these statutes are of recent origin; none of these are so drastic in character as our Arizona statute. As pointed out by Governor Kibbey in his veto message, the provision of the Maine constitution which governs the subject, adopted in 1893, was made to apply only to the future, and specifically exempted all persons who at the time were voters, or who should be of the age of 60 or more years. The statute of Louisiana exempted from its operation all persons who might own \$300 worth of property assessed in their name, or whose father or grandfather was or had been entitled to vote. The statutes of North Carolina and Mississippi exempted persons whose ancestors were entitled to vote prior to January 1, 1867. The ability to read orally the Constitution of the United States in the English language as applied generally to all persons indiscriminately is the requirement of no other statute than that of Arizona, so far as I am able to ascertain, unless it be that of Connecticut, the text of which I have not had the opportunity to examine. Reviewing the history of legislation on the subject both in this country and abroad, I should say that the tendency is to broaden the franchise rather than to limit it to any particular class. The exception to this, so far as recent legislation is concerned, is found in the laws of certain Southern States where the negro population is excessive, and

where the effort is avowedly racial in its object and intended to insure the dominancy of the white race. As the Mexican vote in Arizona does not exceed 10 per cent of the whole and is relatively growing less, it is idle to suggest that Anglo-Saxon supremacy is here in danger, even remotely.

I am a sincere believer in the necessity and expediency in a democracy of as near an approach to manhood suffrage as may be practical. The educative value of the franchise is enormous, and on the whole this system has worked well and satisfactorily.

Considering the question as a whole, so much can be said against the act of March 10, 1909, and so little in its favor when the question is viewed as it really is in the light of its history, its purpose, effect, and practical operation, disassociated with assumed considerations of high citizenship and the elevation of our electorate, which, as a matter of fact, by reason of the defects I have pointed out, do not enter into the question, that I have no hesitancy in repeating what I said in the beginning that I favor its repeal and believe that the Senate committee is right in disregarding its provisions in the statehood bill.

With regard to the six months' residence clause which you include in your inquiry, I also state that I see no objection to the time limit in view of the fact that we are a new Territory inviting immigration and basing our hopes for the future upon it. While we do have in some of our mining camps in the Territory a floating population, yet the great bulk of our newcomers are homeseekers who expect to become a part of our permanent population. These persons are vitally concerned in the matter of our constitution and the formation of our state government. They may in six months learn enough of our conditions to qualify them to vote intelligently upon any question which may arise in this formative period concerning our territorial affairs. At any rate it seems to me that they, in all likelihood, will be as well prepared after six months' residence as they would be after a year's residence. My particular reason, however, for favoring the shortening of the time is that a great many people are coming into the Territory, and have been for some time past, and this immigration will increase rather than decrease in the next few months, and it is only fair and right that these people should have an opportunity to have a voice in our government at this critical time in our history.

I trust that I have sufficiently made clear my position on these two questions. I have written this in no acrimonious or censorious spirit, but with the utmost frankness and in the utmost good faith, believing that a full, fair, and honest discussion of these matters on their merits will justify the position I have taken.

Sincerely, yours,

RICHARD E. SLOAN.

That the effect of this so-called "educational-qualification" law is to disfranchise a large number of worthy citizens and to put the control of elections in the hands of the registration officers and the election boards, your committee refers to the testimony of Robert E. Morrison, of Prescott, Ariz., pages 56 to 70 of the hearings on this bill before the committee; the testimony of J. L. Hubbell, of Ganado, Ariz., pages 70 to 74, inclusive; and to the testimony of Rev. William H. Ketcham, director of the Bureau of Catholic Indian Missions, pages 90 to 105, inclusive.

PAYMENT OF COUNTY RAILROAD BONDS.

The third important difference between the House and Senate bills relates to the appropriation of lands for the payment of certain bonds of certain counties of the Territories.

The House bill appropriated 3,000,000 acres of land to each of the proposed states for the payment of *all* the county and territorial indebtedness. The Senate bill appropriates 1,000,000 acres of land and confines it to the payment of certain specified bonds of certain counties which are named. The principle on which the Senate bill is framed in this particular is that Congress should provide for prepayment of only such bonds as were invalid, but were subsequently made valid by act of Congress.

Your committee do not believe that the United States should pay all of the territorial and county indebtedness of the proposed new states, as the House bill proposed to do; but your committee feels that when Congress by special act validated certain bonds which were before invalid it places a moral obligation upon Congress to provide for the payment of such bonds which Congress by this act had made valid.

The history of the bonded and other indebtedness of the various counties of New Mexico and Arizona is extensive; and under the provisions of the Senate bill it is not necessary to go into all of it.

The facts concerning the bonds which the Senate bill appropriates land to pay for, however, may properly be given.

THE NEW MEXICO COUNTY RAILROAD BONDS.

First, as to the payment of the bonds of Santa Fe and Grant counties, of New Mexico, for which alone the Senate bill provides: In 1879 the people were induced to vote extensive aid to the building of a railroad through said counties. Although the bonds thus voted were plainly invalid, they were nevertheless issued, bought by bona fide purchasers, and the railroad for which they were issued was constructed and has been in operation ever since.

This railroad was of great benefit to other parts of the Territory as well as to these two counties, because at that time the Indians were very troublesome, and the government troops could be hurried to the scene of hostilities over this railroad at a saving of many days and sometimes weeks of time. So while the bonds were invalid legally, they were purchased in good faith, and the people received the consideration for them.

For a very brief time the people of these counties paid the interest on these bonds; but when one suit, hereinafter referred to, was brought to test the validity of similar bonds issued by certain counties of Arizona, the people of the New Mexico counties refused to pay further interest on their bonds, and have not paid any interest on them since—not even after Congress, by special act, made said bonds valid. No reason was given for not paying the interest on these bonds—the authorities merely refused to levy taxes to pay them.

Therefore the debt has grown until at the present time it is almost \$1,000,000. Full history of these bonds is given in the testimony of ex-Governor Prince, pages 9 to 13, inclusive, of the hearings before the Committee on Territories, the testimony of Charles A. Spiess, pages 13 to 25, inclusive; the statement of Bird S. Coler, pages 25 to 27, inclusive, and the statement of N. B. Laughlin, pages 28 to 35, inclusive.

REFUSAL TO PAY VALID COURT-HOUSE BONDS.

It is a curious circumstance somewhat connected with this, the refusal of the people to pay even interest on the above-named debt, that in 1884 Santa Fe County, N. Mex., issued bonds to build a court-house.

These bonds were bought by bona fide purchasers, and with the proceeds the court-house was built and is being used to this day, and the validity of these court-house bonds never has been questioned and can not be. Yet the people have refused to pay a

cent of the interest on these bonds, although they were admitted to be valid, and the people received full consideration therefor and are enjoying the proceeds thereof. Judge Laughlin, in his statement before your committee, when asked why the people refused to pay any interest on these admittedly legal and valid bonds with the proceeds of which the court-house was built, answered:

I have no apology to make for them. They simply would not pay them; that is the truth, and the truth is what you want. (Page 31, Statehood hearings before Committee on Territories.)

THE ARIZONA COUNTY RAILROAD BONDS.

In the case of railroad bonds in certain counties in Arizona the facts were different. Like the New Mexico counties above referred to the Arizona counties issued similar bonds in aid of a railroad which was to be constructed with the proceeds of the sale thereof. But not only were the Arizona bonds plainly invalid, as was the case with the New Mexico bonds, but the Arizona bonds were never sold by the authorities, the railroad never was built, and the people never had any consideration from them.

The testimony shows that these bonds disappeared in some mysterious way from the safe in which they were kept by the authorities of the Territory and fell into the hands of their present holders—no one knows how.

So the people rightly and wisely tested their validity in the courts, and in the case of *Lewis v. Pima County* (155 U. S.) the Supreme Court, in an unanimous opinion, declared these bonds invalid as being plainly in violation of the federal statutes on that subject. This decision also applied to and made invalid the New Mexico county bonds above referred to for the same reason.

So both the New Mexico county railroad bonds and the Arizona county railroad bonds were not only plainly invalid under the existing statutes, but were declared to be so by the Supreme Court as above shown.

But the New Mexico county railroad bonds were sold in the regular way, bought by bona fide purchasers and the railroad was built, and the people received the benefit.

The Arizona county railroad bonds, on the contrary, were not sold, but were surreptitiously extracted from the safe, the railroad was never built, and the people got no benefit from them.

Nevertheless the Territory of Arizona subsequently assumed the indebtedness represented by these invalid county bonds. The testimony taken by the committee shows that this was done because a railroad promoter and builder represented to the legislature of the Territory of Arizona and to the people that for the reason of the nonpayment of these declared invalid bonds, the bond market would not take any other Arizona railroad securities; and that, as it was necessary to get other railroads, Arizona should establish a reputation in the bond market.

So Arizona was induced to assume the indebtedness represented by these legally invalid and really fraudulent bonds, although this was merely a guarantee, the counties being still responsible to the Territory for the payment of these legally and actually fraudulent bonds.

The testimony also shows that for the same reason a bill was gotten through Congress in 1906 expressly validating the bonds of the two Territories issued under the circumstances above described.

By this act of Congress the people of the Arizona counties which issued these railroad bonds were saddled with this indebtedness, for which they received no consideration whatever. A full history of the bond transaction is given in the testimony of Hon. Mark Smith, former Delegate from Arizona, on pages 35 to 40, inclusive, of the hearings before the Committee on Territories on the present bill.

The conclusion of your committee is that Congress should appropriate 1,000,000 acres of land to each of the proposed new states to pay the indebtedness represented by the principal and interest of the particular county railroad bonds validated by act of Congress as above described; and the Senate bill accordingly so provides.

But your committee disagrees with the proposition of the House bill that the United States should pay the entire county and territorial indebtedness of the proposed new states. First of all, it has never been done before in the case of any state; secondly, the Nation is not responsible morally or otherwise for the county or territorial indebtedness of the proposed new states excepting the county railroad bonds above referred to. As to those latter bonds your committee does feel that the Nation is responsible for the payment of these bonds because of the act validating them which Congress passed.

SAFEGUARDS THROWN AROUND LANDS GRANTED THE NEW STATES.

The fourth important difference between the House and Senate bills is that the former bill has no restriction regarding the disposal of the lands granted the proposed new states, whereas the latter bill places on these lands careful and rigid, though entirely reasonable and practical, restrictions.

The Senate bill (secs. 10 and 28) expressly declares that the lands granted and confirmed to the new states shall be held in trust, to be disposed of only as therein provided and for the several objects specified. The same trust feature is extended to the proceeds of the granted lands. Mortgages are entirely forbidden, and the sales and leases are required to be made to the highest bidder at a public auction, after notice by advertisement, except that these formalities are dispensed with in the case of any lease for a period of five years or less.

Appraisal is required before sale or lease, and sales or other disposition for a price less than the value so fixed or the minimum prices mentioned in the bill are forbidden, as well as transactions upon credit, unless accompanied by security.

The bill fixes minimum prices for lands generally at \$3 per acre in Arizona, and at that price or \$5 per acre in New Mexico, according as they may lie to the west or east of the line between ranges 18 and 19 east of the New Mexico principal meridian. But a special case is made of lands susceptible of irrigation under federal or other irrigation projects, which are not to be sold for less than \$25 per acre.

As hereinabove indicated, it extends the trusts attaching to the lands to the funds created by their disposition and requires that each fund be kept separate by the state treasurer and that he be under bond for their safe-keeping.

Transactions in contravention of the act are declared to be void, and it is made the duty of the Attorney-General to take such proceedings at law and in equity as may be necessary or appropriate to enforce the provisions relative to the application and disposition of the lands and the proceeds or funds derived therefrom.

REASONS AND PRECEDENTS.

In the foregoing provisions there is nothing new in principle. For many years it has been the custom to specify the purposes for which grants of lands are made to incoming states and to place express restrictions upon the mode of disposing of them.

In the Oklahoma enabling act (sec. 7) \$5,000,000 were given in lieu of land grants in the old Indian Territory, but it is provided that the same shall be held and invested by the state in trust for school uses, and that the interest alone shall be used and that only for school purposes.

Section 8 of that act, concerning lands for certain educational institutions, provides that the proceeds of sale shall be safely kept and invested by the state and the income alone used; forbids that any land valuable for minerals, including oil and gas, shall be sold prior to January 1, 1915, but permits leases thereof for not more than five years, if made to the highest bidder after public advertisement and upon sealed proposals; and it undertakes to state specifically what the notices shall contain, requires the proceeds to be covered into the proper fund, and invalidates transfers of leases without assent of the state authorities.

Section 9 of that act provides that sales of school land shall be made only after appraisal and at public sale limiting the quantity to 160 acres to any one purchaser, gives preference rights to lessees, and commands that the proceeds shall go into a permanent fund of which the interest alone shall be expended. It permits, when the legislature consents, leases of not more than ten years' duration.

Section 10 of that act contains similar provisions as to school lands, and requires, before they shall be sold, an appraisal thereof at their true cash value by three disinterested appraisers, who shall fix the upset price.

Restrictions as to terms of leases, quantities that may be sold to one purchaser, price per acre, and provisions which in effect declare the lands and their proceeds a trust estate to be devoted only to the purposes specified in the act are found also in the enabling acts of Wyoming, North and South Dakota, Montana, Washington, Utah, and others.

The Senate bill, while somewhat more specific, is not notable for any marked innovation unless it be found in the express provision for its enforcement by the action of the Attorney-General. There is nothing, however, especially radical in this, since at the most it merely serves to remove any doubt concerning the right and power of the Executive to take action for the enforcement of the trusts upon which the lands are given whenever a serious violation occurs, without waiting specific direction or authorization from Congress for each particular case.

The reasons for placing these restrictions about the disposition of the lands which Congress gives to the proposed new states are shown by

the recent experience which the Territory of New Mexico had as to the disposition by territorial officials and by others of lands heretofore granted:

By act of June 21, 1898, certain extensive grants of land were made to the Territory of New Mexico and a great deal of the land was covered with valuable timber. The territorial authorities violated the law in disposing of this timber.

In 1908 the Department of Justice, after careful investigation, began several suits against the offending parties, and these suits are now pending. In 1908 a bill was introduced, the effect of which was to end these suits. The same failed of passage.

Memorandum of the suits brought by the Department of Justice, called the "Tall timber" cases, in New Mexico, is attached hereto and marked "Exhibit A."

In view of this, as well as other circumstances, your committee believes that the grants of land made in this bill can not be too carefully safeguarded for the purpose for which they are appropriated. Accordingly the Senate bill throws around these land grants the restrictions above referred to.

It is proper to say that these provisions of the Senate bill providing for the restrictions of the disposition of the land granted, was obtained by the valuable and indeed indispensable assistance of the Department of Justice.

BOTH TERRITORIES AGREE TO THESE RESTRICTIONS.

Your committee inserts in this report the testimony of witnesses appearing before it with reference to the safeguards thrown about the disposition of public lands granted in this bill.

From the testimony of Hon. L. B. Prince, ex-governor of New Mexico (p. 5 of the hearings), is taken the following:

The CHAIRMAN. Before you get to the bond question, let me ask you this. I understood you to say in private conversation that you highly approved, as you said every other man did who thought of the subject, of the safeguards thrown about the disposition of public lands granted in this bill.

Mr. PRINCE. We approve of the strictest safeguards that can possibly be found in order to insure the perpetuity of that fund and its inviolability.

From the testimony of Mr. Charles A. Spiess (p. 19 of the hearings):

The CHAIRMAN. At that point, let me ask you this question: In the bill introduced in the Senate, known as the Senate bill, very careful restrictions have been thrown around the disposition of this land. I understood you to say to me in private conversation that you were entirely satisfied that the restriction could not be made too strong.

Mr. SPIESS. Absolutely, Senator, and more than that. We would have adopted those same restrictions by our constitutional convention—

From the testimony of Mr. Robert E. Morrison (p. 69 of the hearings):

The CHAIRMAN. The bill which we call the Senate bill (the bill introduced in the Senate) throws exceedingly careful restrictions about the disposition of any public lands which the United States appropriates for any purpose in these two Territories. You are familiar with the bill. What is the fact as to your approval or disapproval of the restrictions thus thrown around those lands?

Mr. MORRISON. I approve them absolutely. I believe in every restriction being placed around the disposition of public lands that will prevent them from being sold or disposed of in large areas.

From the testimony of Mr. J. L. Hubbell (p. 73 of the hearings):

The CHAIRMAN. I want to ask you, before I forget it, the same question I asked others: You have read the bill which has been presented in the Senate?

Mr. HUBBELL. Yes, sir. I wish to say something else in regard to it.

The CHAIRMAN. Just a moment, and then you can go on. I do not want to forget this. What have you to say as to the restrictions which this bill throws about the disposition of public lands that may be appropriated?

Mr. HUBBELL. They are entirely satisfactory.

From the testimony of Hon. Ralph H. Cameron, Delegate from Arizona (p. 88 of the hearings):

The CHAIRMAN. You have noted the careful restrictions put about the disposition of lands after they are appropriated?

Mr. CAMERON. Yes, sir.

The CHAIRMAN. As the Delegate from that Territory, what have you to say about those restrictions?

Mr. CAMERON. I heartily agree with them in every respect.

The CHAIRMAN. The people down there do, too, do they?

Mr. CAMERON. I believe the restrictions on such public lands can not be made too broad.

The CHAIRMAN. As the Delegate from the Territory and the representative of the people down there, what do you think about the restrictions that we have already placed about them in this bill?

Mr. CAMERON. I believe they are absolutely right.

THE JUDICIARY SECTIONS.

The next striking difference between the House and Senate bills is found in the judiciary sections. Your committee submitted this section of the House bill to the Department of Justice for examination and suggestions. The department found that the House bill gravely imperilled, to say the very least, the status of existing suits in New Mexico. For this reason the judiciary sections have been practically rewritten, since it was found impracticable to amend the House provisions. It is proper also to say that these sections of the Senate bill were written by the Department of Justice after careful and patient investigation of the subject.

Sections 13, 14, and 15 include the judiciary features of the bill as respects New Mexico, and sections 31, 32, and 33 the corresponding features as respects Arizona. Sections 13 and 30 are taken from the House bill unaltered. They provide for the creation of one district court of the United States in each state, that of New Mexico being attached to the eighth and that of Arizona to the ninth circuit. They provide for one district judge, United States attorney, and marshal in each district; fix their salaries, the terms of court, etc.

In sections 14 and 31 notable changes have been made with a view to the more perfect protection of rights to review determinations of territorial tribunals in the higher federal courts. These sections, as now amended, are intended to include every determination which under the present law might be reviewed in the United States Supreme Court or the circuit court of appeals, whether the appeal or writ of error be taken before or after the passage of the act; and to provide that, so far as concerns further proceedings after those appellate federal courts shall have ruled, the circuit and district courts of the United States, or state courts, as may be appropriate to the nature of the case, shall be the successors of the territorial courts.

The House bill provides that there shall be the same right to review judgments or decrees of the supreme court of the Territory in the

federal Supreme Court and circuit court of appeals after admission as there would have been before "*in any case arising within the limits of the proposed state* prior to admission."

The Senate bill omits the words italicized as either superfluous or, if they mean anything, unduly restrictive; for if "arising" means arising in court the phrase is unnecessary, while if reference is intended to the place where the cause of action originated an unreasonable limitation would result.

The House bill expressly provides for decision by the Supreme Court of the United States of all cases pending therein or that may be prosecuted thereto by writ of error or appeal from the supreme court of the Territory. It omits to make, in this specific portion at least, any provision for cases from the supreme court of the Territory pending for review in the circuit court of appeals, and it makes no provision for a continuance of the existing jurisdiction of the United States Supreme Court to review directly the decisions of district courts and district judges of the territories in habeas corpus matters affecting personal freedom. (R. S., 1909; *Gonsales v. Cunningham*, 164 U. S., 612-619; *in re Delgado*, 140 U. S., 586.)

It is possible also, if not clear, that there now exists the right to take directly to the Federal Supreme Court from the territorial *district* courts, convictions in capital cases. (Act of Feb. 26, 1889, ch. 113, 25 Stat., 656, sec. 6; *Brown v. U. S.*, 171 U. S., 631-635; *Cross v. U. S.*, 145 U. S., 571-575.)

If this right exists it is important that it should be preserved, especially in view of the fact that capital cases, strangely enough, are not otherwise reviewable beyond the supreme court of the Territory, though other criminal cases are. (See 1 *Rose Fed. Pro.*, sec. 48 and notes.)

The Senate bill rectifies these omissions.

The words "and as in other states of the Union" in the House bill (p. 19, lines 5 and 6 of the bill as amended) have been eliminated in the Senate bill. They appear to add nothing, and it may be questioned whether they mean anything.

Sections 15 and 33 have been much changed in matter and phraseology. Their aim is to care for all cases pending before any of the territorial tribunals when statehood comes by providing for their transfer for a final adjudication by courts to which, from their nature, they should logically go.

Having in view the composite character of the jurisdiction of the territorial courts and the propriety of distributing those cases which have not reached any final determination upon the same principles as must have governed their initiation if statehood had existed before they were begun, the bill here provides that all cases in the lower territorial courts of such a character that if brought in a State they would fall within the jurisdiction of a circuit or district court of the United States must be transferred to those courts.

Under this head, of course, are included such matters as prosecutions for crimes against the United States, suits for penalties and forfeitures, seizures on land, patent and copyright cases, bankruptcy matters, all of which, by the act of February 18, 1875, chapter 80, amending the Revised Statutes, section 711, are denominated as exclusively federal, as well as other cases not included in the enumeration there, but which by their nature must necessarily be brought

in a federal court; for instance, certain cases under the interstate-commerce act, or any case based upon a federal statute giving a new right and prescribing that the remedy shall be in a federal court.

The cases of "concurrent jurisdiction"—that is, such as in a state may be initiated in either a state or a federal court—go first to the state courts, but subject to be removed, just as they would be if they had been begun after statehood.

Cases pending in the supreme court of the Territory at the time of admission go to the highest court of the state, except cases in which the United States is a party, or which by nature appertain to the exclusive original jurisdiction of federal courts, which go to the circuit court of appeals.

The bill also, in express terms, saves the right to go to the Supreme Court of the United States from the state appellate court or the circuit court of appeals in these cases.

The right to go up from the state court is determined by the rules governing the power of the Supreme Court to review decisions of the highest appellate tribunals of the states generally. On the other hand cases so removed to the circuit court of appeals may be further reviewed, when there decided, if they could have been reviewed had they been in like manner decided by the supreme court of the Territory.

The Senate bill also makes specific provision as to the survival and prosecution of civil causes of action and criminal offenses not brought into court prior to admission—a subject upon which the House bill is silent. All offenses against the laws of the Territory are to be punished by the courts of the state. It gives to the proper state and federal courts power to provide by rule as to how the records of the cases which they are to receive directly from the territorial courts shall be authenticated and perfected. This is a provision which experience in Oklahoma shows to be wise and necessary.

In view of the considerable number of suits pending in the district courts of the territory in which the United States has impleaded the Territory itself, for the purpose of annulling certain alleged fraudulent and unlawful dispositions of lands granted by the former to the latter for specific purposes, it is expressly provided in the Senate bill that in all such suits the state shall be substituted as a party defendant in lieu of the Territory. This is appropriate and indeed necessary, inasmuch as the state will succeed to the interest of the Territory in the subject-matter of the suit.

Before leaving these sections it may be well to point out further to some extent the ways in which they serve to improve the House bill.

The Senate bill provides for transfer of cases pending "in any of the courts of said Territory." The House bill provides for transfer of no cases except those pending in the territorial supreme or district courts. This may mean a legislative void in respect to the unfinished business of other territorial tribunals; e. g. justice of the peace, probate courts, county courts.

The House bill moreover here covers only cases "arising within the limits" of the state. If this refers to causes of action it is unreasonably restrictive. If it refers to the locus fori it seems superfluous. The House bill makes the federal, circuit, and district courts "successors" of the territorial supreme court no less than of

the territorial district courts, as to all pending federal cases, and directs that, upon being transferred, such cases shall be "proceeded with," etc.

No reason is perceived why matters within the appellate jurisdiction of the supreme court should be transferred to a lower federal court, which has no such jurisdiction under our general system. There is a creation of successorship in section 14 of the House bill (p. 18, lines 18, et seq.) retained in the present bill, but this is understood to apply to cases affirmed or reversed by the Federal Supreme Court and courts of appeals when sent down to the lower courts for further proceedings.

POLYGAMY.

Another difference of importance between the House and Senate bills is found in the provisions of the ordinance relating to polygamous cohabitation. Under the decisions of the various courts, and especially of the Supreme Court, this omission in the House bill would permit the practice of polygamy and bigamy, notwithstanding the various prohibitions thereof.

Polygamy and bigamy are not common-law crimes, but statutory. (See "Words and Phrases Judicially Defined," vol. 1, p. 773, and vol. 6, p. 5447.) As a consequence there is no generally accepted legal definition of either term. These offenses vary in different jurisdictions as the statutes vary in their phraseology, or as the various constructions placed on the statutes by the highest courts vary, e. g., in Massachusetts it is held that an honest and reasonable belief in the death of a former husband or wife is not a defense to a prosecution for bigamy. (*Commonwealth v. Hayden*, 163 Mass., 453.) In Ohio it is held contra. (*State v. Stank*, 10 Weekly Law Bulletin, 16.)

It is generally held that the offense is consummated as soon as the second marriage takes place, and therefore the prosecution against the offender is soon barred by the statute of limitations. Therefore it seems advisable to prohibit polygamous cohabitation, for, as was said by the Supreme Court of the United States in *Cannon v. U. S.* (116 U. S., 55), at page 72, speaking of section 3 of the act of March 22, 1882, known as the Edmunds Act, which made polygamous cohabitation an offense:

It is the practice of unlawful cohabitation with more than one woman that is aimed at—a cohabitation classed with polygamy and having its outward semblance. It is not, on the one hand, meretricious unmarital intercourse with more than one woman. General legislation as to lewd practices is left to the territorial government. Nor, on the other hand, does the statute pry into the intimacies of the marriage relation. But it seeks not only to punish bigamy and polygamy when direct proof of the existence of those relations can be made, but to prevent a man from flaunting in the face of the world the ostentation and opportunities of a bigamous household, with all the outward appearances of the same relations which existed before the act was passed and without reference to what may occur in the privacy of those relations.

Furthermore, as is pointed out in the same case, on page 75, "Bigamy and polygamy might fail of proof for want of direct evidence of any marriage." It was held in that case, on page 71:

That the court properly charged the jury that the defendant was to be guilty if he lived in the same house with the two women, and ate at their respective tables one-third of the time or thereabouts, and held them out to the world by his language or conduct, or both, as his wives; and that it was not necessary it should be shown that he and the two women, or either of them, occupied the same bed or slept in the same room, or that he had sexual intercourse with either of them.

The case referred to came up from the supreme court of the Territory of Utah on a writ of error, and the decision of the lower court was affirmed. Subsequently, in 118 U. S., 355, the mandate was recalled and the writ of error was dismissed on the ground that the court had no jurisdiction on a writ of error from a conviction of an offense under section 3 of the Edmunds act, but the reasoning of the case is not thereby weakened.

For other cases taking the same view of the distinction between polygamous cohabitation on the one hand, and bigamy and polygamy on the other, see the three cases of the *U. S. v. Snow*, decided in the supreme court of Utah and reported in 4 Utah, 280, 295, 213. These cases were taken up to the Supreme Court of the United States on writs of error, which were dismissed for lack of jurisdiction (*Snow v. U. S.*, 118 U. S., 346), but the effect of the dismissal in these cases, as in the Cannon case, was to leave the defendant in jail.

See also for remarks as to the distinction between polygamy and polygamous cohabitation, the case of *Murphy v. Ramsey* (114 U. S., 15). See also the case of *Snow v. U. S.* (118 U. S., 346), where, on page 351, Mr. Justice Blatchford said:

By no proper construction can the offense of cohabitation with more than one woman be regarded as identical with the offense of bigamy or polygamy.

In other words, the House bill does not forbid polygamy if practiced under the form of polygamous cohabitation. Therefore the Senate bill also prohibits "polygamous cohabitation."

THE ENGLISH LANGUAGE.

The next marked difference between the House and Senate bills is found in the provisions relating to the teaching of other languages than English in the schools. The House bill permits the teaching of other language than English in the schools, whereas the Senate bill provides that the schools shall be conducted in English, striking out the provision in the House bill "that nothing in this act shall preclude the teaching of other languages in said public schools."

In this connection the House bill provides in the fifth clause of section 3 that—

the ability to read, write, and speak the English language sufficiently well to conduct the duties of the office without the aid of an interpreter shall be a necessary qualification for state officers.

Instead of this the Senate bill provides in clause 5 of section 2—

that ability to read, write, speak, and understand the English language sufficiently well to conduct the duties of the office without the aid of an interpreter shall be a necessary qualification for all state officers and members of the state legislature.

One of the most serious difficulties of both of these Territories, and especially the Territory of New Mexico, has been and is the disposition of the Mexican population to continue the Spanish language from generation to generation.

In many counties in New Mexico a jury can not be impaneled all of whom can understand English; and an interpreter is used in many, if not in most, of the courts to interpret the testimony of the English-speaking witnesses, the argument of the counsel, and the charge of the court to the jury.

Not only this, but an interpreter is necessary in the legislature itself in order to conduct business.

Nor is this all. It is a further fact that no political convention of any political party is or can be held without the aid of an interpreter.

The reason for this is, of course, the disposition of the Mexican population to preserve their mother tongue and to teach the children the language of their fathers and mothers.

Had the provisions of the Senate bill been in force in the Territory for a generation the conditions above described would not now exist. Since we are about to admit this Territory as a state of the Union, the disposition of its citizens to retain their racial solidity, and in doing so to continue the teaching of their tongue, must be broken up.

It is only just to the Spanish-speaking citizens of the Territory of Arizona to say that, first, they do not exist in such numbers as in New Mexico; second, that they do not live in such solid and compact communities as in New Mexico, but are more scattered; and, third, and principally, that while the whole of the Spanish-speaking citizens of Arizona can not speak the English language, their children have been taught the common tongue spoken throughout the United States and can speak, write, and understand it perfectly.

RECLAMATION AND POWER SITES.

The next important difference between the Senate and House bills is found in the seventh clause of section 2 of the House bill, and the seventh clause of section 3 of the Senate bill, which is a part of the ordinance.

The language of this clause in the House bill is as follows:

That the state shall grant to the United States Government all rights and powers relating thereto necessary for the carrying out of the provisions by it of the act of Congress entitled "An act appropriating the receipts from the sale and disposal of public lands in certain states and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, and acts amendatory thereof, to the same extent as if said State had remained a Territory.

Instead of this provision, the seventh clause of section 3 of the Senate bill is as follows:

That there be and are reserved to the United States, with full acquiescence of the state, all right and powers for the carrying out of the provisions by the United States of the act of Congress entitled "An act appropriating the receipts from the sale and disposal of public lands in certain states and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, and acts amendatory thereof or supplementary thereto, to the same extent as if said state had remained a Territory.

The language provided for in the Senate bill was written with the assistance of the legal officer of the Reclamation Service of the Interior Department.

It will be seen that the principal difference is that the House bill provides "that the state shall grant," etc., whereas the Senate bill provides "that there be and are reserved to the United States," etc.

The purpose of both the House and Senate bills in this respect is the same, but the Senate bill makes the reservation in the bill itself, whereas the House bill only provides that the state shall make a grant to the United States after it is admitted. It might be well at this point to state the reasons of this provision.

This clause was inserted because of the decision of the Supreme Court in the case of *Kansas v. Colorado* (206 U. S., 46-92), where the court holds that in regard to lands within the Territories there can be no question of the right of Congress to enact such legislation as is contained in the reclamation act for the construction of irrigation works to reclaim lands within the Territory. In some quarters the language of this decision has been understood to indicate that the Supreme Court might hold the reclamation act to be unconstitutional when applied within States under certain conditions, though as to one feature this doubt has been resolved in favor of the constitutionality of the reclamation act in the case of *United States v. Hanson* (167 Fed. Rep., 881).

The operations of the reclamation act are so beneficial to the interests of the states and Territories that there seems to be a general sentiment among the people of the Territories that it would be advisable to forestall so far as possible any unfavorable effects upon the operations of the reclamation act within these Territories by reason of possible adverse features in any future decision of the courts in this connection.

In the judgment of the committee it seemed advisable that the states should cooperate as far as possible in carrying out the provisions of the reclamation act within their limits and avoid so far as might be legally feasible the effect of any adverse decision.

The same language has been used in the portion of the bill relating to Arizona and the same considerations apply.

Page 60, lines 17 and 18, change the description of the line between the granted lands to be sold for \$5 per acre and those to be sold for \$3 per acre from the one hundred and fifth meridian of longitude to the line between ranges 18 and 19 east of the New Mexico principal meridian. The reason for this is that it is very expensive and an unnecessary refinement to be guided in this matter by a meridian of longitude, because of the difficulty of locating the same accurately upon the ground, whereas the public-land surveys for determining the line described in the bill have already been made for the most part. The line in question runs very close to the location of the one hundred and fifth meridian.

The provisions of section 10 from line 21, page 60, to line 1, page 61, fix the minimum price for the sale of certain classes of granted lands. The lands located east of the range line described are generally more valuable and have better climatic conditions, particularly in regard to rainfall, than the lands west of that line. It has therefore seemed desirable to set a higher minimum limit for lands east of this line, and the prices of \$3 and \$5, respectively, seem to be justified by the conditions.

In regard to the provisions of lines 21, page 60, to line 1, page 61, that lands under any reclamation project of the Government or under any other project for the reclamation of lands shall not be sold for less than \$25 an acre, experience throughout the West shows that land which is susceptible of irrigation under a project completed or about to be constructed is rarely sold for less than \$25 an acre, even though considerable expense may be necessary to remove brush or to level the land. In the five projects of the Reclamation Service within the two Territories it is understood that no lands irrigable under the project

can be purchased for as low a price as \$25 per acre. Most of the lands are held at from \$50 to more than \$100 per acre.

The usual price of lands not specially desirable is from \$30 to \$40 per acre. It may be conceded that among the granted lands a few tracts could not be readily sold at this time for \$25 per acre, yet such cases would be but a very small percentage of the granted lands which might be irrigable, and would have no appreciable effect upon the salability of such lands as a whole.

Considering the very favorable climate and the high value of the crops which can be raised in this section, the price fixed is undoubtedly reasonable, and no doubt a very large part of the lands granted which lie within irrigation projects will be sold for more than \$25 per acre, and such lands will doubtless advance considerably in value.

The considerations in regard to irrigable lands apply equally to Arizona and the same provision is found in the portion of the bill devoted to that Territory.

Page 61, lines 1 to 8. This proviso which is applied in case of both Arizona and New Mexico is intended to secure an easy adjustment between the United States and the states for the acquisition of lands necessary for irrigation works under the reclamation act. The adoption of this provision will simplify materially the administrative features in settling this question which, under the conditions existing in some of the other states, has been found somewhat embarrassing.

The proposed exchange of lands will not in any sense be a burden to the proposed state, because of the enormous benefits which the state will derive from the lands turned back to the United States. There would be comparatively few areas affected by this provision.

The portion of section 10 from lines 9 to 25, page 61, similar provision being found in the portion of the bill devoted to Arizona, provides for the reservation to the United States of lands actually or prospectively valuable for the development of water power, and also that the Secretary of the Interior shall designate the land subject to the provisions of this clause within five years from the time that statehood becomes effective.

The desirability of this reservation is manifest as carrying out the generally approved policy of preserving control of the lands which would become valuable for the development of water power or hydroelectric use.

The short time during which this reservation will be undetermined will not have any serious effect upon the disposition of the lands granted, and the amount of land which would be withheld under such reservation would be a very small proportion of the amount of land granted.

SALINE LAND GRANT.

The next important difference between the House and Senate bills relates to saline lands. This applies particularly to the Territory of New Mexico.

By the act of June 21, 1898 (30 Stat., 484), Congress granted to the Territory of New Mexico, for university purposes, in addition to the 111,680 acres specified, also all saline lands in the Territory.

Considerable difficulty arose over the construction to be placed upon the word "saline." The question was considered by the Department of the Interior on July 10, 1906, in the case of Territory of

New Mexico (35 L. D., 1), involving list No. 3 of university selections, embracing 79,493.61 acres, which case was disposed of by the department as follows:

The only conclusion which the department is able to draw from the legislation above reviewed, its purposes considered and its related provisions and terms compared, is that Congress had in contemplation throughout merely common salt, or chloride of sodium, in its various forms of existence or deposit; and that only lands containing commercially valuable quantities thereof are available under the grant of "saline lands" to the Territory.

From the evidence submitted at the hearing, which has been carefully examined, the department is unable to find that any of the selected lands contain valuable quantities of such salt. Aside from the fact that the testimony was not directed to definite subdivisions—whilst it details the percentages of chloride of sodium resulting from analyses of samples taken from portions of the area involved—it conveys no adequate idea as to quantity and utility. The fair inference to be drawn from that testimony is that the lands, or some of them, contain deposits of gypsum of greater extent and value, and as well, perhaps, certain of the chemical salts, and that where chloride of sodium is found it is in conjunction with the other substances.

In denying the application on behalf of the Territory for additional time and for leave to submit further evidence, after the close of the hearing, at which no motion for continuance was presented, your office committed no error. However, since the pending appeal was taken, counsel have filed in the department, for addition to the record in the case, a detailed report of an examination of the lands involved by the former president of the university, including topographical and geological features, surface indications, analyses of surface samples, and classification accordingly. This has been considered here.

The objections to the additional showing offered by the Territory are twofold. In the first place, the term "saline" is extended to cover, in the words of the author of the report, "all lands which contain in their soils or in the waters therein the salts of sodium, potassium (including chlorides, carbonates, and sulphates of these, and the other so-called alkaline earths), and the associated gypsum minerals." As has been shown, there is no justification for the inclusion of anything except deposits of common salt under the head of "saline." The second objection is, that the commercial value of the deposits is in no case established. Apparently, the slightest trace of sodium chloride in the soil or water is depended upon as determining the fact that the land which contains it is "saline" in the legal sense of the term. If this extended use were permitted there is hardly a square mile in the United States west of the 100th meridian which could not with some justice be claimed as a "saline."

It would seem desirable that in every case direct evidence should be given, first, that the deposit of rock salt or of water carrying salt in solution exists on the land which is claimed as "saline," and, second, that it should be proven that the bed of rock salt is sufficiently thick and pure, or that the brine is sufficiently rich in salt to make it of probable commercial value at the present time.

The decision of your office is affirmed.

It thus appears that there is serious contention as to the meaning of the term "saline lands," not yet decided by any court.

The saline lands heretofore selected and approved to the Territory aggregate a little more than 1,520 acres.

Therefore the repeal of the saline-land grant to the University of New Mexico becomes imperative. If the term "saline lands" means all lands containing any salts, the grant has an enormous potential value. If, on the contrary, it refers only to lands which bear salt in the common acceptation of that term, the value is still great (notwithstanding the opinion of the department), but not determinable at the present time.

But the House bill merely repeals these saline-land grants and nothing more. This leaves these valuable salt deposits open to entry, purchase, and exploitation by private interests.

Already efforts to secure private control of these salt lands of New Mexico are underway. Subsequent to the grant made to the University of New Mexico in 1898 a law was passed by Congress in Janu-

ary, 1901, making all lands containing deposits of salt in any form subject to location and purchase the same as placer mining claims. There was no general demand for the passage of this act, and there are grounds for the belief that it may have been advocated by persons desiring to secure control of the saline lands in New Mexico, and especially upon the large and valuable salt deposits lying to the east of the line of railroad of the Santa Fe Central Railroad Company.

That railroad, which extends from Santa Fe to Torrance, a station on the Rock Island Railroad, a distance of 117 miles, had been projected and its line surveyed. It was generally known that these salt deposits constituted one of the most valuable resources of the region to be traversed by the railroad and would at some time furnish a large amount of freight business.

The act of 1901, however, was ineffectual so far as New Mexico was concerned, because Congress had already donated the saline lands to the Territory, and the governing board of the University of New Mexico, in order to avoid disputes, obtained from the General Land Office specific instructions to the local land offices not to receive any entries of such lands.

In 1901-2 persons interested in the Santa Fe Central Railroad Company purchased a small Texas grant which had been confirmed by a special act of Congress in 1888. This grant covered a small portion of the salt deposits referred to, and was considered perhaps the best of them.

In 1903 an attempt was made on behalf of the Santa Fe Central people to open negotiations with the board of regents of the University of New Mexico for the leasing of a salt lake called Laguna de Perro, the largest of the salt lakes of that region. It was stated on behalf of the Santa Fe Central people that it was the purpose of the company to develop these lakes and establish a market for the salt, provided the company could secure control of all the deposits in the vicinity. Nothing came of these negotiations, because the lands had never been surveyed, which made it impossible for the Territory to make selections thereof for the approval of the Secretary of the Interior.

The matter has remained in this condition to the present time, and in view of the potential value of the grants repealed, your committee has inserted section 18, on page 72 of the bill, which reads as follows:

That all saline lands in the proposed State of New Mexico are hereby reserved from entry, location, selection, or settlement until such time as Congress shall hereafter provide for their disposition.

QUANTITY LAND GRANTS.

The next difference worthy of note between the Senate and House bills is the amounts of land granted for various purposes. It is sufficient under this head to set out the grants heretofore made and the grants made by the House bill and by the Senate bill.

The quantity granted the proposed states for common-school purposes is the same in the bill as passed by the House and as reported to the Senate, namely, sections 2, 16, 32, and 36, or their equivalent, in every township in the proposed states.

Grants made by act of 1898 and changes made in the quantity granted for specific purposes are shown by the following table:

NEW MEXICO.

	Act of 1898.	House bill.	Senate bill.
	Acres.	Acres.	Acres.
Permanent reservoirs for irrigation purposes.....	500,000		
Improvement of Rio Grande in New Mexico.....	100,000		
Reform schools.....	50,000		
For university purposes.....	111,680	120,000	200,000
For public buildings.....	32,000	96,000	100,000
Insane asylum.....	50,000	100,000	100,000
Penitentiaries.....	50,000	100,000	
Schools and asylums for deaf, dumb, and blind.....	50,000	100,000	100,000
Miners' hospitals.....	50,000	50,000	50,000
Normal schools.....	100,000	200,000	200,000
Charitable, penal, and reformatory institutions.....		100,000	100,000
Agricultural and mechanical colleges.....		150,000	150,000
School of mines.....	50,000	150,000	150,000
Military institutes.....	50,000	100,000	100,000
Payment of debts of Territory and county assumed by Territory.....		3,000,000	
In payment of bonds and interest thereon issued by Grant and Santa Fe counties, validated by act of Congress January 16, 1897.....			1,000,000
Institution for blind.....	50,000		

ARIZONA.

University purposes.....		120,000	200,000
Public buildings.....		96,000	100,000
Insane asylum.....		100,000	100,000
Penitentiaries.....		100,000	
Schools and asylums for the deaf, dumb, and blind.....		100,000	100,000
Miners' hospitals.....		50,000	50,000
Normal schools.....		200,000	200,000
Charitable, penal, and reformatory institutions.....		100,000	100,000
Agricultural and mechanical colleges.....		150,000	150,000
School of mines.....		100,000	150,000
Military institutes.....		100,000	100,000
Irrigation and improvement of rivers.....		600,000	
Payment of Territory and county indebtedness.....		3,300,000	
Payment of bonds and interest thereon, issued by Maricopa, Pima, Yavapai, and Coconino counties, validated by act of Congress, June 6, 1896.....			1,000,000

The only grant heretofore made to Arizona is the one of 72 sections, equal to 4,680 acres, for university purposes, by act of February 18, 1881 (21 Stat., 326).

The foregoing statement shows, among other things, that the 100,000 acres granted by the House bill for penitentiary purposes in each of the States have been omitted from the bill as reported to the Senate; that the grant of 600,000 to Arizona for public reservoirs and irrigation of rivers has been eliminated, and that the grant of 3,000,000 to New Mexico to pay territorial and county indebtedness; and the grant of 3,300,000 for the same purpose to Arizona have been reduced to 1,000,000 in each case for the payment of certain bonds which were validated by act of Congress. There are also other changes of less importance shown by this statement.

The omission in the Senate bill to appropriate any lands for penitentiaries was a clerical error in reporting the bill, and your committee will offer a committee amendment appropriating 100,000 acres for the penitentiaries in each proposed State, as is provided in the House bill.

LANDS AND RIGHTS OF THE INDIANS.

A final difference in the bills to which your committee wishes to call attention refers to the more careful safeguarding of the rights of the Indians, and particularly to the Pueblo Indians.

Page 3, line 16, of the bill as it passed the House of Representatives contains the words "except as to Indians not taxed." These words have been omitted from section 2, page 45, of the Senate redraft.

If these words had remained in the act there might be a discrimination made against Indians whereby they would be denied the right to a proper trial or the right to sue in the courts as to property therein then restricted by federal laws, or they might be denied the same rights as to marriage, inheritance, etc., that are given to all other citizens of the proposed states.

Page 4, lines 1, 2, and 3, of the bill as passed by the House contains the following words: "and the sale, barter, or giving of intoxicating liquors to Indians and the introduction of liquors into Indian country are forever prohibited." The Senate draft inserts after the word "country" the following words: "which term shall also include all lands now owned or occupied by the Pueblo Indians of New Mexico."

The Pueblo Indians hold their lands by patents from the United States confirming grants previously made by the Spanish Government. Their status is somewhat different from that of Indians occupying reservations created by treaty, acts of Congress, or executive order.

It is believed that the words inserted by the Senate bill would more effectually provide against the introduction of liquor in the territory owned by these Indians and remove any uncertainty as to their lands being Indian country under existing laws.

Page 4, the paragraph commencing on line 4 of that page and ending on line 6 of page 5, has been changed as follows:

On line 10, after the word "States," the words "or any prior sovereignty" have been inserted.

Page 5, line 1, the words "or acquired as aforesaid or as may be granted or confirmed" have been inserted, and the words "containing a provision exempting lands thus granted from taxation." On page 5, lines 2 and 3 have been omitted, and the words "may prescribe," on page 5, line 6, have been changed to "as prescribed," and the words "or may hereafter prescribe" have been added.

The amendments which have been made are deemed necessary in order to carry out the intent of Congress as expressed in the act of March 3, 1905 (33 Stat. L., 1069), exempting the lands of the Pueblo Indians from taxation until otherwise provided by Congress.

The act as amended by the Senate adds an eighth paragraph of the irrevocable ordinance, as follows:

Eighth. That whenever hereafter any of the lands contained within Indian reservations or allotments in said proposed state shall be allotted, sold, reserved, or otherwise disposed of they shall be subject for a period of twenty-five years after such allotment, sale, reservation, or other disposal to all the laws of the United States prohibiting the introduction of liquor into the Indian country, and the terms "Indian" and "Indian country" shall include Pueblo Indians in New Mexico and the lands owned or occupied by them.

The purpose of this amendment is to maintain the status of the existing Indian reservations and allotments within the proposed State as Indian country within the meaning of the law prohibiting the introduction of liquor into the Indian country.

The words "except as to Indians not taxed" occurring on page 24, lines 10 and 11, have been omitted from section 20, on page 75 of the Senate draft, for the same reasons that they were omitted from section 2, occurring on page 45, hereinbefore cited.

The paragraph commencing on line 23, page 24, and ending with line 25, page 25, line 4 has been changed thus: After the word "States" the words "or any prior sovereignty" have been inserted, and in lines 19 and 20 the words "or may" have been eliminated, and after the word "granted" the following words have been inserted: "or acquired as aforesaid or as may be granted or confirmed."

In lines 21 and 22, page 25, the words "containing a provision exempting the lands thus granted from taxation" have been eliminated, and in lines 24 and 25 the words "may prescribe" have been omitted and the words "as prescribed or may hereafter prescribe" have been inserted.

These changes have been inserted to safeguard the rights of any Indians who may have acquired title to their lands from a prior sovereignty, thus effectually preventing their taxation.

After the seventh paragraph of the irrevocable ordinance on page 27, line 9, there has been inserted a provision reading as follows:

"Eighth. That whenever hereafter any of the lands contained within Indian reservations or allotments in said proposed state shall be allotted, sold, reserved, or otherwise disposed of they shall be subject for a period of twenty-five years after such allotment, sale, reservation, or other disposal to all the laws of the United States prohibiting the introduction of liquor into Indian country."

This provision has been inserted to more effectually provide against the introduction of liquor into the territory owned by these Indians.

The Government charges in the bills substantially that the lands involved in the above suits are valuable for the timber thereon; that certain companies or parties desired to secure this timber in large quantities, but were unable to do so lawfully by reason of the provision in section 10 of the act of June 21, 1898, that "not more than one quarter section of land shall be sold to any one person, corporation, or association of persons;" that said companies or parties made known their difficulty to the territorial officers charged with the disposition of the lands and requested said territorial officers to designate those lands which in the judgment of said companies or parties were best suited for the purposes of said companies or parties as the lands prescribed by the act to be selected for the benefit of the New Mexico institutions; and that at the instance of these companies or parties said territorial officers entered into schemes whereby, through means of said companies or parties procuring certain irresponsible individuals each to purchase a quarter section of land, to be later transferred to said companies or parties, the latter eventually obtained the large quantity of land desired and at grossly inadequate prices. In other instances it is charged that the territorial officers granted by contract, for grossly inadequate considerations, the right to certain companies or parties to cut timber from large tracts of land, a right expressly denied by the act under consideration.

CONCLUSION.

Your committee can not too earnestly call attention to the extreme care that should be taken with every provision of a bill like this. It is the only legislation which Congress can pass that never can be

amended, repealed, or modified in any way. A statehood bill once enacted is enacted forever without possibility of change. If a mistake is made it is beyond remedy. Every other law Congress can enact can be repealed, amended, modified—but not a statehood bill. Therefore every line of it should be wrought out with a painstaking care not required of any other form of legislation. Once passed, corrections of mistakes are impossible; once passed, it is beyond recall.

EXHIBIT A.

MEMORANDUM RELATIVE TO THE "TALL TIMBER" CASES IN NEW MEXICO.

The act of June 21, 1898 (30 Stat., 484), entitled "An act to make certain grants of land to the Territory of New Mexico, and for other purposes," reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections numbered sixteen and thirty-six in every township of the Territory of New Mexico, and where such sections, or any parts thereof, are mineral or have been sold or otherwise disposed of by or under the authority of any act of Congress, other nonmineral lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said Territory for the support of common schools, such indemnity lands to be selected within said Territory in such manner as is hereinafter provided: *Provided,* That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants of this act, but such reservations shall be subject to the indemnity provisions of this act.

SEC. 2. That fifty sections of the unappropriated lands within said Territory, to be selected and located in legal subdivisions as hereinafter provided in this act, shall be, and are hereby, granted to said Territory for the purpose of erecting public buildings at the capital of the State of New Mexico when said Territory shall become a state and be admitted into the Union, when said capital shall be permanently located by the people of New Mexico, for legislative, executive, and judicial purposes.

SEC. 3. That lands to the extent of two townships in quantity, authorized by the sixth section of the act of July twenty-second, eighteen hundred and fifty-four, to be reserved for the establishment of a university in New Mexico, are hereby granted to the Territory of New Mexico for university purposes, to be held and used in accordance with the provisions in this section; and any portions of said lands that may not have been heretofore selected by said Territory may be selected now by said Territory. That in addition to the above, sixty-five thousand acres of nonmineral, unappropriated, and unoccupied public land, to be selected and located as hereinafter provided, together with all saline lands in said Territory, are hereby granted to the said Territory for the use of said university, and one hundred thousand acres, to be in like manner selected, for the use of an agricultural college. That the proceeds of the sale of said lands, or any portion thereof, shall constitute permanent funds, to be safely invested, and the income thereof to be used exclusively for the purposes of such university and agricultural college, respectively.

SEC. 4. That five per centum of the proceeds of the sales of public lands lying within said Territory which shall be sold by the United States subsequent to the passage of this act, after deducting all expenses incident to the same, shall be paid to the said Territory, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said Territory.

SEC. 5. That the schools, colleges, and university provided for in this act shall forever remain under the exclusive control of said Territory, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes, or of the income thereof, shall be used for the support of any sectarian or denominational school, college, or university.

SEC. 6. That in lieu of the grant of land for purposes of internal improvement, made to new states by the eighth section of the act of September fourth, eighteen hundred

and forty-one, which section is hereby repealed as to New Mexico, and in lieu of any claim or demand of the State of New Mexico under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and twenty-nine of the Revised Statutes, making a grant of swamp and overflowed lands, which grant it is hereby declared is not extended to said State of New Mexico, the following grants of nonmineral and unappropriated land are hereby made to said Territory for the purposes indicated, namely:

For the establishment of permanent water reservoirs for irrigating purposes, five hundred thousand acres; for the improvement of the Rio Grande in New Mexico, and the increasing of the surface flow of the water in the bed of said river, one hundred thousand acres; for the establishment and maintenance of an asylum for the insane, fifty thousand acres; for the establishment and maintenance of a school of mines, fifty thousand acres; for the establishment and maintenance of an asylum for the deaf and dumb, fifty thousand acres; for the establishment and maintenance of a reform school, fifty thousand acres; for the establishment and maintenance of normal schools, one hundred thousand acres; for the establishment and maintenance of an institution for the blind, fifty thousand acres; for a miners' hospital for disabled miners, fifty thousand acres; for the establishment and maintenance of a military institute, fifty thousand acres; for the enlargement and maintenance of the territorial penitentiary, fifty thousand acres. The building known as The Palace, in the city of Santa Fe, and all lands and appurtenances connected therewith and set apart and used therewith, are hereby granted to the Territory of New Mexico.

SEC. 7. That this act is intended only as a partial grant of the lands to which said Territory may be entitled upon its admission into the Union as a state, reserving the question as to the total amount of lands to be granted to said Territory until the admission of said Territory as a state shall be determined on by Congress.

SEC. 8. That all grants of land made in quantity or as indemnity by this act shall be selected by the governor of the Territory of New Mexico, the surveyor-general of the Territory of New Mexico, and the solicitor-general of said Territory, acting as a commission, under the direction of the Secretary of the Interior, from the unappropriated public lands of the United States within the limits of the said Territory of New Mexico.

SEC. 9. That said commission shall proceed, upon the passage of this act, to select said lands, for each purpose as hereinbefore designated, in legal subdivisions of not less than one-quarter section, and shall report to the Secretary of the Interior such selections, designating in such report the purpose for which such bodies of land as selected are to be respectively used as provided above in this act.

SEC. 10. That the lands reserved for university purposes, including all saline lands, and sections sixteen and thirty-six reserved for public schools, may be leased under such laws and regulations as may be hereafter prescribed by the legislative assembly of said Territory; but until the meeting of the next legislature of said Territory the governor, secretary of the Territory, and the solicitor-general shall constitute a board for the leasing of said lands; and all necessary expenses and costs incurred in the leasing, management, and protection of said lands and leases may be paid out of the proceeds derived from such leases. And it shall be unlawful to cut, remove, or appropriate in any way any timber growing upon the lands leased under the provisions of this act, and not more than one section of land shall be leased to any one person, corporation, or association of persons, and no lease shall be made for a longer period than five years, and all leases shall terminate on the admission of said Territory as a state; and all money received on account of such leases in excess of actual expenses necessarily incurred in connection with the execution thereof shall be placed to the credit of separate funds for the use of said institutions, and shall be paid out only as directed by the legislative assembly of said Territory, and for the purposes indicated herein. The remainder of the lands granted by this act, except those lands which may be leased only as above provided, may be sold under such laws and regulations as may be hereafter prescribed by the legislative assembly of said Territory; and all such necessary costs and expenses as may be incurred in the management, protection, and sale of said lands may be paid out of the proceeds derived from such sales; and not more than one-quarter section of land shall be sold to any one person, corporation, or association of persons, and no sale of said lands or any portion thereof shall be made for less than one dollar and twenty-five cents per acre; and all money received on account of such sales, after deducting the actual expenses necessarily incurred in connection with the execution thereof, shall be placed to the credit of separate funds created for the respective purposes named in this act, and shall be used only as the legislative assembly of said Territory may direct, and only for the use of the institutions or purposes for which the respective grants of lands are made: *Provided*, That such legislative assembly may provide for leasing all or any part of the lands granted

in this act on the same terms and under the same limitations prescribed above as to the lands that may be leased only, but all leases made under the provisions of this act shall be subject to the approval of the Secretary of the Interior, and all investments made or securities purchased with the proceeds of sales or leases of lands provided for by this act shall be subject to like approval by the Secretary of the Interior.

SEC. 11. That there is hereby appropriated from the unexpended funds in the Treasury of the United States ten thousand dollars, or so much thereof as may be necessary, to be expended under the direction of the Secretary of the Interior, for the purpose of paying the expenses of the selection and segregation of said respective bodies of land, including such compensation to said commission as the Secretary of the Interior may deem proper.

SEC. 12. That all acts and parts of acts in conflict with the provisions of this act, whether passed by the legislative assembly of said Territory or by Congress, are hereby repealed.

Approved, June 21, 1898.

It will be observed that the following lands were appropriated by the above act:

	Acres.
By section 1:	
Sections 16 and 36, for support of common schools.....	
By section 2:	
For public buildings at state capital.....	32,000
By section 3:	
For state university.....	46,080
For state university.....	65,000
For state university all saline lands in Territory.....	
For an agricultural college.....	100,000
By section 6:	
For water reservoirs for irrigating purposes.....	500,000
For improvement of Rio Grande.....	100,000
For an asylum for the insane.....	50,000
For a school of mines.....	50,000
For an asylum for the deaf and dumb.....	50,000
For a reform school.....	50,000
For normal schools.....	100,000
For an institution for the blind.....	50,000
For a hospital for disabled miners.....	50,000
For a military institute.....	50,000
For enlargement and maintenance of territorial penitentiary.....	50,000
The "Palace" in Santa Fe and lands appurtenant.....	

It will be noted that by section 10 restrictions are placed upon the quantity of land which may be sold to any one person, corporation, or association of persons, and that certain of the lands, to wit, the lands reserved for university purposes, including salines, and sections 16 and 36, devoted to public school lands, may not be sold, but only leased, not more than one section, however, to any one person, corporation, or association of persons, and not for any longer period than five years and without right in the lessee to cut or remove any timber from such leased lands.

Large quantities of land were selected by the Territory in the manner provided in this act, the grants having been accepted by a law of the territorial legislature which at the same time created a board of public lands consisting of the governor, solicitor-general, and commissioner of public lands of the Territory, with jurisdiction to administer the lands and the funds therefrom derived.

Investigations conducted first through the Interior Department and supplemented by officials of the Department of Justice revealed what appeared to be gross violations of the limitations, obligations, and trusts imposed by this act of Congress upon the Territory and the officials designated by its law as guardians of the subject-matter of the congressional donation. In due course these investigations led to the institution, in 1907, under authority of the Attorney-General,

of twelve suits in different judicial districts of the Territory, which are still pending and undetermined. These, with the acreages of land involved in each, are as follows:

SECOND JUDICIAL DISTRICT.

U. S. v. Territory of New Mexico and American Lumber Co., 7,780 acres, Valencia County, contract November 7, 1904.

U. S. v. Territory of New Mexico and American Lumber Co., 29,920 acres, McKinley and Valencia counties, contract December 5, 1904.

U. S. v. Territory of New Mexico and Clark M. Carr, 11,377.50 acres in Valencia County, contract of July 28, 1905.

U. S. v. S. B. Day, 10,804.96 acres in Valencia County.

U. S. v. Gross, Kelly & Company, H. W. Kelly, and Richard Dunn, 16,524.24 acres, Torrance County. (Also filed in sixth judicial district because of conflict of jurisdiction.)

U. S. v. Pennsylvania Development Co., New Mexico Fuel and Iron Co., and W. S. Hopewell, 7,797.36 acres, Torrance County. (Also filed in sixth district.)

U. S. v. American Lumber Co. and Silvestre Marabal, 4,160 acres, Valencia County.

FOURTH JUDICIAL DISTRICT.

U. S. v. Gross, Kelly & Co., 908.56 acres, San Miguel County.

U. S. v. Territory of New Mexico, Gross, Kelly & Co., and J. W. Harrison, 1,040 acres, San Miguel County, contract of January 23, 1906.

SIXTH JUDICIAL DISTRICT.

U. S. v. Alamogordo Lumber Co., 23,571.72 acres, Otero County.

U. S. v. Pennsylvania Development Co., New Mexico Fuel and Iron Co., and W. S. Hopewell, 7,797.36 acres, Torrance County. (Also filed in second judicial district because of conflict of jurisdiction.)

U. S. v. Gross, Kelly & Co., H. W. Kelly, and Richard Dunn, 16,524.24 acres, Torrance County. (Also filed in second district.)

The two suits in the sixth judicial district in which the Pennsylvania Development Company and Gross, Kelly & Co. are, respectively, the principal defendants, are, as noted above, duplications made out of abundant caution because of existing doubts as to the proper venue.

In some of the cases it is alleged in the bills that the lands were sold by the territorial board to persons who, without any interest of their own, but merely as agents or "dummies" for corporations, applied to purchase in small lots, in apparent conformity with the act of Congress, and afterwards deeded to the principal defendants for whom they were acting, the purchase moneys being paid openly by those illegal beneficiaries. In others it is alleged that the board entertained direct applications for the purchase of the timber growing upon the large acreages involved, and sold the timber to the applicants in violation of the letter and spirit of the act of Congress and at grossly inadequate prices. Inadequacy of price, violation of the plain restraints of the granting act, breach of duty, and fraud by the territorial officials composing the board are prominent features in each case as stated by the bill.

The theory upon which the Territory is joined as defendant in some of the cases is, of course, that it has been and is recreant to

its duty as trustee and has allowed through its officials, acting without warrant and in willful disregard of the federal law in question, the trust estate to be squandered and dissipated by means and for ends not tolerated, and has refused to take any steps itself to remedy these alleged wrongs. The bills further aver in some cases that there were fraudulent representations made, with the knowledge and collusion of the territorial officers, by applicants to purchase timber, grossly underestimating its value, and that the sales thereof were made upon such estimates. They set forth also unlawful cutting and conversion of the timber. Injunctions, accountings, annulment of contracts and deeds, and restoration of title are prayed.

The right of the United States as plaintiff to maintain such suits was sustained upon demurrer by the district court for the second judicial district in the cases in which the American Lumber Company appears as a party defendant.

Since the litigation was begun strong representations have been made by persons of influence and standing in the Territory tending to show that the transactions complained of, however irregular, were conducted by the territorial officials concerned in good faith and with a view to the advancement of the best interests of the Territory, and the propriety of compromising the suits in some way, or, if that be not justified, of obtaining curative legislation from Congress, has been strongly urged. It has been throughout the disposition of the Department of Justice and of the Interior Department to find and adopt that attitude which will be as fair as possible to the Territory and the private parties, while relaxing in no way the effort to enforce the law according to its spirit. In the winter of 1908 a bill was introduced in the House (H. R. 16277), as follows:

A BILL To provide for the sale of large-growth and matured timber on lands heretofore granted to the Territory of New Mexico, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the large and matured timber growing upon any of the lands granted to the Territory of New Mexico under the provisions of an act entitled "An act to make certain grants of land to the Territory of New Mexico, and for other purposes," approved June twenty-first, eighteen hundred and ninety-eight, may be sold by the Territory, for the uses and purposes for which the lands were granted, under such rules and regulations as may be prescribed by the commissioner of public lands of the Territory with the approval of the governor; but no sale or contract for the sale of the timber upon any of said lands shall be valid until approved by the Secretary of the Interior: *Provided,* That all contracts heretofore made by the Territory of New Mexico for the cutting of timber from lands granted to the Territory by said act shall be approved and confirmed by the Secretary of the Interior upon the execution of a satisfactory agreement by the holders thereof, in a form prescribed by him, to pay for such timber to the Territory of New Mexico the sum of three dollars in all for each acre embraced in their respective contracts, including land heretofore cut over under said contracts.

SEC. 2. That upon the delivery of properly executed and duly recorded deeds to the commissioner of public lands of the Territory of New Mexico by the holders of the record title conveying to the Territory of New Mexico all claim or title possessed by them in or to any lands heretofore selected by the Territory of New Mexico under the provisions of said act of June twenty-first, eighteen hundred and ninety-eight, to which a colorable record title has been acquired by apparent purchase from the Territory of New Mexico, the commissioner of public lands of the Territory shall grant to said holders of the record title, without further consideration, the right to cut and remove the matured and large-growth timber upon the lands respectively conveyed by them to the Territory of New Mexico, together with all necessary rights of way for harvesting the same.

SEC. 3. That the lands reconveyed to the Territory of New Mexico under the provisions of the preceding section; shall be held by the Territory in trust for the several uses and purposes, and subject to the same conditions and limitations under which the lands were selected by the Territory: *Provided,* That if any of the lands embraced

in any contract heretofore made with the Territory of New Mexico or so reconveyed to the Territory are with in any established national forest, the Territory of New Mexico shall be authorized and permitted to select in exchange therefor an equal number of acres from the surveyed, unappropriated, nontimbered, and nonmineral public lands of the United States in said Territory, the lands so selected to be held by the Territory in trust, as aforesaid, the same as the lands in lieu of which they may be selected, and the lands made the basis of exchange to become, without further action, part of the national forest in which they are situated, subject, however, to all rights granted by the commissioner of public lands of the Territory of New Mexico to cut the timber thereon under either of the foregoing sections.

SEC. 4. That all laws or parts of laws inconsistent with the provisions hereof are hereby modified to accord with the provisions of this act.

On February 12, 1908, Hon. Jno. W. Gaines, M. C., transmitted to the department H. R. 16277, together with the following letter:

HOUSE OF REPRESENTATIVES,
Washington, February 12, 1908.

DEAR SIR: In the matter of H. R. 16277; I beg to ask you to give me fully the merits of the litigation referred to in said bill, covering the entire history as far as practicable.

I do not approve of the bill for many reasons, and particularly because it proposes to compromise out of the court this litigation which I can not see is right or just. I am not familiar with the facts of the case, and I am struggling to get hold of all the information I can on the subject, and particularly why this bill should not be enacted.

Yours, very respectfully,

JNO. W. GAINES.

HON. CHARLES J. BONAPARTE,
Attorney-General, Washington, D. C.

On February 25, 1908, the Department replied to Mr. Gaines:

DEPARTMENT OF JUSTICE,
Washington, February 25, 1908.

SIR: Replying to your letter of February 12 relative to H. R. 16277, and responding to your request therein for information, I beg to say that the act of June 21, 1898, referred to in the bill, made certain grants of land to the Territory of New Mexico for educational purposes, with the usual indemnity provisions, for public buildings (sections 1-5) and for internal improvements, specifying the establishment of permanent water reservoirs for irrigating purposes, the improvement of the Rio Grande, and the establishment and maintenance of various educational and charitable institutions. The total grant under the latter headings was of 1,100,000 acres. The act also provided (sections 8-10) for the selection of the lands granted by a commission consisting of the governor, the surveyor-general, and the solicitor-general of the Territory, acting under the direction of the Secretary of the Interior, and for the lease of certain of the lands granted and the sale of the remaining lands under certain restrictions including a prohibition against cutting timber upon lands leased and a limitation of the quantity of land which could be leased to any one person, corporation, or association, and of the time for which a lease could be made. As to sales, it was provided that the lands subject to sale might be sold under laws and regulations to be prescribed by the legislative assembly of the Territory, with a restriction on the amount which could be sold to any one person, etc., and \$1.25 per acre was fixed as the minimum price for which sales could be made. A proviso to section 10 provided that all or any part of the lands granted by the act might be leased on the same terms and under the same limitations prescribed as to lands which may be leased only, and made leases and sales and the investments made or securities purchased with the proceeds of sales or leases subject to the approval of the Secretary of the Interior.

Under this legislation and regulations prescribed by the legislative assembly, certain lands embraced in the grants were leased, in effect, to lumber companies, notwithstanding the prohibition of the law as to timber cutting, under the guise of contracts to cut the timber thereon, at a certain price, and other lands were sold to such companies in pursuance of the authority conferred upon the territorial officers. The acreage covered by these contracts and sales amounted to about 71,000 acres out of the 1,100,000 above referred to. The Secretary of the Interior and the land officers of the United States, after investigation of the various disposals of these lands by the territorial officers, were of opinion that the contracts for cutting timber were contrary to law, and that the sales of lands were irregular and made improvidently and not for the best interests of the Territory, being for an inadequate price. They were also of opinion that the price realized for the timber under the contracts to cut was inadequate.

The lands were sold for \$3 per acre, and the standing timber under the contract at \$2.50 per acre. There was, however, no charge that the territorial officers had not acted in good faith and for what they conceived to be the best interests of the Territory, at a time when the state institutions referred to required funds immediately if they were to be established and maintained at all.

Under these circumstances the United States filed complaints in equity in the supreme court of the Territory for the various districts where the lands in question were situated, for the recovery of the lands, for damages, for the value of the timber already cut, and for the obtaining of an injunction to restrain further cutting, intending to proceed under rules upon the various defendants to show cause why an injunction should not be granted, etc. The United States was acting upon the theory that being the donor of the lands, and trustee as *parens patrie* for the people of the Territory, it had the right to intervene in order to rescind the irregular and improvident conveyances made, and recover the lands with proper damages for the waste already committed. One such suit was tried out before Judge Abbott in the second district of the Territory, in which the American Lumber Company was defendant, and the Government was successful in its contentions. The other similar suits, some four in number, remain to be tried upon the same lines, and thereafter, no doubt, the issue would have been carried up finally for adjudication by the Supreme Court of the United States.

This bill provides for the settlement of these suits by the sale of large and matured timber upon any of the lands granted to the Territory for the uses and purposes of the grant under rules prescribed by the territorial officers named, subject to approval by the Secretary of the Interior, with the proviso that the existing timber-cutting contracts may be approved and confirmed by the Secretary upon the payment of \$3 in all per acre. As stated above, \$2.50 per acre was originally paid, and an additional payment of 50 cents per acre would be made under this bill if enacted into law. I understand it to be the opinion of the Interior Department that this price gives the Territory and the institutions which are the beneficiaries of the grant a fair value and satisfactory compensation for the timber.

As to the remaining lands selected and sold, it is provided that they shall be reconveyed to the Territory, in consideration of which the present holders of the so-called colorable record title shall have the right, without further consideration, to cut and remove the matured and large growth timber upon the lands so reconveyed to the Territory. These lands were sold for \$3 per acre, and upon the terms stated as to lands sold and the timber contracts, respectively, the basis as to both will be the same. That is, the Territory will hold all the lands and the larger timber will have been sold at the rate of \$3 per acre. The Territory thereupon, under this bill would hold the lands in trust for the several uses and purposes and subject to the conditions and limitations of the act of 1898. And there is a suitable provision for lieu lands if any part of the present territorial lands lie within an established national forest reserve.

I understand that the Secretary of the Interior considers the foregoing compromise and settlement of the existing litigation to be for the best interests of the Territory, and that he is in favor of the passage of the bill. Briefly stated, the measure means that the 71,000 acres thus improvidently disposed of out of the 1,100,000 acres embraced in this particular part of the grant are recovered by the Territory, and that for the large timber thereon, proper to be cut, the Territory will receive in all \$3 per acre. It may be added that an alleged reason for this settlement has been strongly urged by the officers of the Territory and the defendants in the suits; namely, that if the litigation be thus terminated meritorious private enterprises which are developing the resources of the Territory would be kept alive, and this would continue the employment of about 1,500 men who otherwise, if the Government urges the pending litigation and prevails in it, must be thrown out of employment and dispersed.

Respectfully,

Attorney-General.

HON. JOHN W. GAINES,
House of Representatives.

This bill failed of passage.

The cases are for the most part still pending upon demurrers, having been much delayed by the pressure and negotiations toward compromise and looking to the possibility of curative legislation. It is the intention of the Department of Justice, however, to have the status of each of these suits promptly and carefully considered to the end that they may be disposed of upon their merits as quickly as possible.